

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 9

HUMAN RIGHTS BUREAU

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DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 9

HUMAN RIGHTS COMMISSION

Subchapter 1

Organizational Rules

Rule	24.9.101	Organization of the Human Rights Commission
	24.9.102	Responsibilities of the Department of Labor and Industry and the Commission
	24.9.103	Commission Meetings -- Quorum and Decision Making Authority
	24.9.104	Liberal Construction -- Effect of Partial Invalidity
	24.9.105	Definitions
		Rule 24.9.106 reserved
	24.9.107	Applicability of Rules (REPEALED)
		Rule 24.9.108 reserved
	24.9.109	Purpose and Scope of Rules
		Rule 24.9.110 reserved
	24.9.111	Document Format, Filing, and Service
		Rule 24.9.112 reserved
	24.9.113	Time
		Rule 24.9.114 reserved
	24.9.115	Jurisdiction to Consider Jurisdiction
		Rule 24.9.116 reserved
	24.9.117	Disqualification of a Member of the Commission
		Rule 24.9.118 reserved

DEPARTMENT OF LABOR AND INDUSTRY

Rule 24.9.119 Ex Parte Communications

Rule 24.9.120 reserved

24.9.121 Objections to Dismissal of Complaint

Rule 24.9.122 reserved

24.9.123 Appeal of Hearing Officer Decisions

Rule 24.9.124 reserved

24.9.125 Commission Hearings

Subchapter 2

Investigation and Conciliation

Rule 24.9.201 Liberal Construction; Effect of Partial Invalidity (REPEALED)

24.9.202 Definitions (REPEALED)

24.9.203 Prehearing Procedure: Introduction (REPEALED)

24.9.203A Scope and Purpose of Rules

24.9.204 Complaint; Who May File, Timeliness (REPEALED)

24.9.205 Complaint; Filing Charge on Behalf of an Aggrieved Person (REPEALED)

24.9.206 Commission Staff Complaints; Class Actions by Individuals or Groups (REPEALED)

24.9.207 Complaint; Date of Filing (REPEALED)

24.9.208 Complaint; Contents (REPEALED)

24.9.209 Complaint; Place and Manner of Filing, Insufficiency, Effective Date of Amendments (REPEALED)

24.9.210 Amendment of Complaints (REPEALED)

DEPARTMENT OF LABOR AND INDUSTRY

Rule	24.9.211	Receipt of Information by Commission (REPEALED)
	24.9.212	Confidentiality (REPEALED)
	24.9.213	complaint; Withdrawal of Complaint by Charging Party; Redesignation of Complaint (REPEALED)
	24.9.214	Intervention (REPEALED)
	24.9.215	Complaint; Deferral from Local, State, or Federal Agencies (REPEALED)
	24.9.216	Notice of Filing of Complaint (REPEALED)
	24.9.217	Complaint; Notice to Commission (REPEALED)
	24.9.218	Complaint; Commencement of Investigation, Mediation (REPEALED)
	24.9.219	Investigation (REPEALED)
	24.9.220	Emergency Order (REPEALED)
	24.9.221	Investigation; Failure to Cooperate With Investigation (REPEALED)
	24.9.222	Investigation; Failure of Charging Party or Aggrieved Person to Cooperate or Keep the Department Advised of Changes in Address (REPEALED)
	24.9.223	Investigation; Failure to Produce Evidence (REPEALED)
	24.9.224	Investigation; Finding of Reasonable Cause or No Reasonable Cause (REPEALED)
	24.9.225	Procedure on Finding of No Reasonable Cause (REPEALED)
	24.9.226	Conciliation and Settlement (REPEALED)
	24.9.227	Discovery (REPEALED)
	24.9.228	Adoption of Model Rules With Amendments (REPEALED)

DEPARTMENT OF LABOR AND INDUSTRY

Rule	24.9.229	Contested Cases, Preamble and Summary (REPEALED)
	24.9.230	Certification of a Case for Hearing (REPEALED)
	24.9.231	Notice of Certification for Hearing (REPEALED)
	24.9.232	When the Commission Receives Notice from the Administrator that a Case is Now Certified for Hearing, the Commission Shall Determine Time and Place for Hearing (REPEALED)
	24.9.233	Presentation of Case In Support of Complaint (REPEALED)
	24.9.234	Answer (REPEALED)
	24.9.235	Contested Cases; Default Order When Party Fails to Appear at Hearing (REPEALED)
	24.9.236	Contested Cases; Informal Disposition, Prehearing Conference (REPEALED)
	24.9.237	Contested Cases; Application for More Definite and Detailed Statement (REPEALED)
	24.9.238	Contested Cases; Subpoenas (REPEALED)
	24.9.239	Contested Cases; Hearing Examiners (REPEALED)
	24.9.240	Contested Case; Hearing (REPEALED)
	24.9.241	Contested Cases; Record (REPEALED)
	24.9.242	Contested Cases; Motions (REPEALED)
	24.9.243	Contested Cases; Evidence (REPEALED)
	24.9.244	Contested Cases; Ex Parte Consultations (REPEALED)
	24.9.245	Contested Cases; Proposed Orders (REPEALED)
	24.9.246	Contested Cases; Final Orders (REPEALED)
	24.9.247	Contested Cases; Notification of Orders (REPEALED)

DEPARTMENT OF LABOR AND INDUSTRY

Rule	24.9.248	Contested Cases; Enforcement Orders (REPEALED)
	24.9.249	Declaratory Rulings and Miscellaneous Provisions, Preamble And Summary (REPEALED)
	24.9.250	Declaratory Rulings; Institution of Proceedings (REPEALED)
	24.9.251	Declaratory Rulings; Content of Petition (REPEALED)
	24.9.252	Declaratory Rulings; Filing and Notification of Disposition of Petition (REPEALED)
	24.9.253	Declaratory Rulings; Notice of Hearing (REPEALED)
	24.9.254	Declaratory Ruling; Conduct Of Hearing (REPEALED)
	24.9.255	Declaratory Ruling; Effect Of Ruling (REPEALED)
	24.9.256	Miscellaneous Provision; Subpoenas and Enforcement (REPEALED)
	24.9.257	Miscellaneous Provisions; Representation (REPEALED)
	24.9.258	Miscellaneous Provision; Service (REPEALED)
	24.9.259	Miscellaneous Provision: Availability of Final Orders and Decisions (REPEALED)
	24.9.260	Time for Review of Hearing Examiner Decisions (REPEALED)
	24.9.261	Dismissal of Complaint Also Pending in Court (REPEALED)
	24.9.262	Issuance of Right to Sue Letter (REPEALED)
	24.9.262A	Issuance of Right to Sue Letter When Requested by a Party (REPEALED)
	24.9.263	Contents of Right to Sue Letter (REPEALED)
	24.9.264	Effect of Issuance of Right to Sue Letter (REPEALED)
	24.9.265	Document Format, Filing, Service and Time (REPEALED)

DEPARTMENT OF LABOR AND INDUSTRY

Subchapter 3

Contested Case Hearing

Rule	24.9.301	Purpose and Scope of Rules (REPEALED)
	24.9.302	Definitions Relating to Contested Cases (REPEALED)
	24.9.303	Jurisdiction to Consider Jurisdiction (REPEALED)
	24.9.304	Incorporation of Other Procedural Rules by Reference (REPEALED)
	24.9.305	Presentation of a Case in Support of a Complaint (REPEALED)
	24.9.306	Appointment and Authority of Hearing Examiner (REPEALED)
	24.9.307	Disqualification of a Hearing Examiner or Member of the Commission (REPEALED)
	24.9.308	Ex Parte Consultations (REPEALED)
	24.9.309	Contested Case Record (REPEALED)
	24.9.310	Place of Hearing (REPEALED)
	24.9.311	Formal Proceedings (REPEALED)
	24.9.312	Informal Proceedings (REPEALED)
	24.9.313	Informal Disposition
	24.9.314	Document Format, Filing and Service (REPEALED)
	24.9.315	Time
	24.9.316	Application of Rules and Unrepresented Parties (REPEALED)
	24.9.317	Appearance, Dismissal and Default (REPEALED)
	24.9.318	Intervention (REPEALED)

DEPARTMENT OF LABOR AND INDUSTRY

Rule	24.9.319	Class Actions (REPEALED)
	24.9.320	Motions (REPEALED)
	24.9.321	Evidence (REPEALED)
	24.9.322	Discovery (REPEALED)
	24.9.323	Amendment of Complaint (REPEALED)
	24.9.324	Prehearing Conferences and Orders (REPEALED)
	24.9.325	Subpoenas (REPEALED)
	24.9.326	Hearing (REPEALED)
	24.9.327	Proposed Orders (REPEALED)
	24.9.328	Notification of Entry of Proposed Order (REPEALED)
	24.9.329	Exceptions to Proposed Orders
	24.9.330	Commission Hearings to Consider Exceptions
	24.9.331	Final Orders

Subchapter 4

Declaratory Rulings

Rule	24.9.401	Purpose and Scope of Rules (REPEALED)
	24.9.402	Construction of Statutes and Rules (REPEALED)
	24.9.403	Form and Content of Petition (REPEALED)
	24.9.404	Filing and Docketing for Hearing (REPEALED)
	24.9.405	Appointment of Hearing Examiner and Authority (REPEALED)
	24.9.406	Notice (REPEALED)

DEPARTMENT OF LABOR AND INDUSTRY

Rule	24.9.407	Parties (REPEALED)
	24.9.408	Place of Hearing
	24.9.409	Prehearing Conferences (REPEALED)
	24.9.410`	Nature of Hearings (REPEALED)
	24.9.411	Proposed Orders (REPEALED)
	24.9.412	Final Orders (REPEALED)
	24.9.413	Effect of Declaratory Ruling
	24.9.414	Incorporation of Other Rules by Reference (REPEALED)

Subchapter 6

Proof of Unlawful Discrimination

Rule	24.9.601	Purpose of These Rules Regarding Proof of Unlawful Discrimination
	24.9.602	Membership in a Protected Class
	24.9.603	Retaliation and Coercion Prohibited
	24.9.604	Discrimination Prohibited--Employment
	24.9.605	Employment Discrimination: Reasonable Demands/Bona Fide Occupational Qualification Exceptions
	24.9.606	Failure to Make Reasonable Accommodation--Employment Discrimination Because of a Disability
	24.9.607	Prohibited Medical Examinations and Inquiries--Employment Discrimination Based on Disability
	24.9.608	Failure to Accommodate--Employment Discrimination Based on Religion
	24.9.609	Discrimination Prohibited--Public Accommodation

DEPARTMENT OF LABOR AND INDUSTRY

Rule	24.9.610	Burden of Proof--Disparate Treatment
	24.9.611	Burden of Proof--Mixed Motive Case
	24.9.612	Burden of Proof--Disparate Impact

Subchapter 7 reserved

Unofficial Version

DEPARTMENT OF LABOR AND INDUSTRY

Subchapter 8

General Provisions

Rule	24.9.801	Definitions (REPEALED)
	24.9.802	Commission Meetings: Quorum; Decision Making Authority (REPEALED)
	24.9.803	Retaliation (REPEALED)
	24.9.804	Affirmative Action Required by the Commission (REPEALED)
	24.9.805	Records

Subchapter 9 reserved

Subchapter 10

Sex Discrimination in Education

Rule	24.9.1001	Purpose
	24.9.1002	Definitions
	24.9.1003	Treatment of Students
	24.9.1004	Admissions
	24.9.1005	Guidance and Counseling Services
	24.9.1006	Access to Course Offerings and Activities
	24.9.1007	Textbooks and Instructional Materials
	24.9.1008	Extracurricular and Athletic Activities
	24.9.1009	Financial Aid
	24.9.1010	Housing and Auxiliary Services for Students
	24.9.1011	Employment Assistance/Placement

DEPARTMENT OF LABOR AND INDUSTRY

Subchapter 11

Interpretive Rules

Rule	24.9.1101	Coverage; Aliens (REPEALED)
	24.9.1102	Coverage; Insurance Companies (REPEALED)
	24.9.1103	Printed Matter for Public Accommodations; When Discrimination Permitted (REPEALED)
	24.9.1104	Real Property Transactions; When Discrimination Permitted (REPEALED)
	24.9.1105	Educational Institutions; When Discrimination Permitted (REPEALED)
	24.9.1106	Burden of Proof (REPEALED)
	24.9.1107	Real Property Transactions; Age Discrimination (REPEALED)

Subchapter 12

Maternity Leave

Rule	24.9.1201	Definitions
	24.9.1202	Termination of Employment Due to Pregnancy Prohibited
	24.9.1203	Right to Reasonable Leave of Absence
	24.9.1204	Mandatory Leave for Unreasonable Length of Time Prohibited
	24.9.1205	Verification of Disability
	24.9.1206	Pregnancy-Related Disabilities to be Treated as Temporary Disabilities
	24.9.1207	Return to Employment After Maternity Leave

DEPARTMENT OF LABOR AND INDUSTRY

Subchapter 13

Insurance and Retirement Plans

Rule	24.9.1301	Definitions
	24.9.1302	Rates and Premiums; Property and Casualty Insurance
	24.9.1303	Rates and Premiums; Life, Disability, and Health Insurance, Annuities, and Pension and Retirement Plans, Programs, and Coverages
	24.9.1304	Payments or Benefits
	24.9.1305	Jurisdiction and Applicability Date

Subchapter 14

Guidelines for Employment

Rule	24.9.1401	General Principles (REPEALED)
	24.9.1402	Sex Discrimination as a Reasonable Demand of Employment (REPEALED)
	24.9.1403	Age Discrimination as a Reasonable Demand of Employment (REPEALED)
	24.9.1404	Physical Handicap Discrimination as a Reasonable Demand of Employment (REPEALED)
	24.9.1405	Mental Handicap Discrimination as a Reasonable Demand of Employment (REPEALED)
	24.9.1406	Pre-Employment Inquiries
	24.9.1407	Adoption of EEOC Sex Discrimination Guidelines
	24.9.1408	Adoption of EEOC Religious Discrimination Guidelines

DEPARTMENT OF LABOR AND INDUSTRY

Rule	24.9.1409	Adoption of EEOC National Origin Discrimination Guidelines
	24.9.1410	Adoption of EEOC Guidelines on Employee Selection Procedures
	24.9.1411	EEOC Guidelines Read in Conjunction With Commission Interpretive Rules
	24.9.1412	Adoption of EEOC Affirmative Action Guidelines

Subchapter 15

Housing Discrimination Procedures and Definitions

Rule	24.9.1501	Purpose and Scope of Rules
	24.9.1502	Definitions
	24.9.1503	Exemptions
	24.9.1504	Complaints and Answers (REPEALED)
	24.9.1505	Investigation (REPEALED)
	24.9.1506	Conciliation
	24.9.1507	Representation of Charging Party
	24.9.1508	Final Disposition

Subchapter 16 reserved

DEPARTMENT OF LABOR AND INDUSTRY

Subchapter 17

Appeals to the Commission

Rule	24.9.1701	Purpose and Scope of Rules (TRANSFERRED)
		Rule 24.9.1702 reserved
	24.9.1703	Document Format, Filing and Service (TRANSFERRED)
	24.9.1704	Time (TRANSFERRED)
	24.9.1705	Jurisdiction to Consider Jurisdiction (TRANSFERRED)
		Subchapters 24.9.1706 through 24.9.1710 reserved
	24.9.1711	Disqualification of a Member of the Commission (TRANSFERRED)
	24.9.1712	Ex Parte Communications (TRANSFERRED)
		Rule 24.9.1713 reserved
	24.9.1714	Objections to Dismissal of Complaint or Refusal to Dismiss Complaint (TRANSFERRED)
		Rules 24.9.1715 and 24.9.1716 reserved
	24.9.1717	Appeal of Final Orders of the Department (TRANSFERRED)
	24.9.1718	Commission Hearings to Consider Appeals (TRANSFERRED)
	24.9.1719	Determination of Appeals (REPEALED)

Subchapter 1

Organizational Rules

24.9.101 ORGANIZATION OF THE HUMAN RIGHTS COMMISSION

(1) The human rights commission (commission) is established by 2-15-1706, MCA. The commission is composed of five members of the public appointed by the governor. The commission is allocated to the department of labor and industry (department) for administrative purposes only. The commission adopts rules separately.

(2) The commission is designated a quasi-judicial board for purposes of 2-15-1706, MCA. Its purpose is to uphold the laws of the state of Montana against discrimination. (History: 2-4-201, 49-2-204, 49-3-106, MCA; IMP, 2-4-201, 49-2-501, 49-2-505, 49-2-510, 49-5-511, 49-3-315, MCA; NEW, Eff. 1/2/77; AMD, 1998 MAR p. 3201, Eff. 12/4/98; AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.102 RESPONSIBILITIES OF THE DEPARTMENT OF LABOR AND INDUSTRY AND THE COMMISSION (1) For complaints of discrimination filed with the department, the Human Rights Bureau will conduct the informal investigation into the allegations contained in the complaint. The Hearings Bureau will conduct contested case proceedings. The commission will conduct informal hearings on objections to the dismissal of complaints by the Human Rights Bureau and appeals of Hearings Bureau decisions. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-201, 49-2-204, 49-2-501, 49-2-504, 49-2-505, 49-5-506, 49-2-510, 49-5-511, 49-3-315, MCA; NEW, Eff. 1/2/77; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.103 COMMISSION MEETINGS -- QUORUM AND DECISION MAKING AUTHORITY (1) The commission shall meet six times per year or upon call of the chairperson, or at the written request of at least three members, the time or place to be designated by the person calling the meeting.

(2) The department shall provide a staff member to act as secretary of the commission. The staff member will keep general minutes of all commission meetings whether in person or by telephone conference call as a public record.

(3) A single commission member may issue an order in a proceeding before the commission which is of a purely procedural nature. For example, a single member of the commission may sign an order regarding a briefing schedule, or an order extending the time in which a party may file exceptions when both parties stipulate that such may be done.

(4) At the commission's discretion, it may choose to meet via electronic telecast that is available to the public. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-205, 49-2-505, 49-2-511, 49-3-315, MCA; NEW, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.104 LIBERAL CONSTRUCTION -- EFFECT OF PARTIAL INVALIDITY

(1) The following rules describe the procedure followed by the human rights commission in resolving complaints of discrimination.

(2) The commission will construe the provisions of the act, the code, and these rules liberally in all proceedings under them, with a view to effect their objects and to promote justice. A principle objective of the act and code is to assure that there will be no discrimination in certain areas of the lives of Montana citizens, except under the most limited of circumstances. Liberal construction of the act and code includes, without limitation, giving broad coverage and inclusive interpretation of the human rights statutes and rules to assure enforcement and protection of the state laws prohibiting discrimination.

(3) In construing the provisions of the act, the code, and the rules, the commission will refer to federal civil rights law and guidance where it is both useful and appropriate and does not conflict with the purposes and intentions of state law.

(4) If a part of these rules is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of these rules is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application or applications.

(5) Where errors of law or procedure do not cause prejudice to a party or deny a party a fair hearing or fundamental justice, they may be disregarded. Parties who assign error for the violation of any rule must demonstrate that a failure to comply with these rules is in fact prejudicial or constitutes prejudice as a matter of law.

(6) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the commission may modify, waive, or excuse their application. The commission may not modify, waive, or excuse mandatory acts which are required by statute or due process of law.

(7) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to the provisions of (6). The commission may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory in order to assure fundamental fairness. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-205, 49-2-501, 49-2-504, 49-2-505, 49-3-304, 49-3-305, 49-3-307, 49-3-308, 49-3-315, MCA; NEW, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.105 DEFINITIONS The following definitions apply throughout this chapter:

- (1) "The act" means the Human Rights Act, Title 49, chapter 2, MCA.
- (2) "Charging party" means a person who files a complaint with the Human Rights Bureau of the Department of Labor and Industry.
- (3) "The code" means the Governmental Code of Fair Practices, Title 49, chapter 3, MCA.
- (4) "Commission" means the human rights commission as established by 2-15-1706, MCA.
- (5) "Department" means the department of labor and industry.
- (6) "Notice of dismissal and right to sue" means a document provided to the charging party by the Human Rights Bureau indicating that the charging party has completed the department's administrative process and can file a discrimination action in district court pursuant to 49-2-511, MCA.
- (7) "Respondent" means any person against whom a complaint is filed.
- (8) "Person" means a person as defined in 49-2-101, MCA. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101, 49-2-501, 49-2-511, 49-3-101, 49-3-315, MCA; NEW, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

Rule 24.9.106 reserved

24.9.107 APPLICABILITY OF RULES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, Title 49, Chapters 2 and 3, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

Rule 24.9.108 reserved

24.9.109 PURPOSE AND SCOPE OF RULES (1) The purpose of the rules in this subchapter is to set forth the procedures the commission will follow for hearing party objections to the dismissal of complaints under 49-2-511, MCA and appeals of final orders under 49-2-505, MCA.

(2) The commission will construe the provisions of the act, the code, and these rules in a reasonable manner. A principal objective of the act and code is to ensure that there will be no illegal discrimination in Montana.

(3) The commission may suspend, waive or modify these rules for good cause to expedite decision, prevent manifest prejudice to a party, assure a fair hearing, or afford substantial justice. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-205, 49-2-501, 49-2-504, 49-2-505, 49-2-511, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1701, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Rule 24.9.110 reserved

24.9.111 DOCUMENT FORMAT, FILING AND SERVICE (1) All documents, pleadings, and papers to be filed shall be eight and one-half inches by eleven inches (8½" x 11") in size, standard quality, opaque, unglazed paper, with a minimum 50% recycled content, of which least 10% shall be postconsumer waste, and in 12-point font or larger, double-spaced, and clearly legible. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. The commission may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) The place of filing is the offices of the Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. The offices are located at 1625 11th Avenue, Helena, Montana. The telephone number is (406) 444-2884; fax (406) 444-2798; TTY (406) 444-0532.

(3) Filing with the commission is effective upon actual receipt at the offices of the department and not upon mailing.

(4) Parties shall submit the original (or original copy) and six copies of all submissions for the record, unless otherwise directed by the commission.

(5) Copies of all submissions filed must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes, and all submissions must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made. Service of copies of submissions upon parties shall be made in accordance with Rule 5 of the Montana Rules of Civil Procedure and may be made by means of first class mail, postage prepaid, unless the commission designates another manner of service.

(6) Filing of a facsimile copy of a document of no more than 20 pages, which is an exact duplicate of the original, shall meet the filing requirements of these rules only if the facsimile copy is followed within five days by filing of the original or original copy of the document and required copies. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-106, 49-2-204, 49-2-511, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1703, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Rule 24.9.112 reserved

24.9.113 TIME (1) In accordance with Rule 6(a) of the Montana Rules of Civil Procedure, in computing any period of time for acts required by any of the commission's rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the department offices are closed on such day. In that event, the period runs until the end of the next day when the department offices are open which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and holidays are excluded in computation. .

(2) In accordance with Rule 6(d) of the Montana Rules of Civil Procedure, whenever a party has a right or is required to do some act under any of the commission's rules within a prescribed period after service of a notice or other paper upon the party and service is by mail, three days shall be added to the prescribed period. The date of service is computed from the date on which service is made by mail, as shown by the certificate of service or date of mailing. Service by mail is complete upon mailing.

(3) Except as to dates fixed by statute and not subject to modification, the commission may enlarge the time to perform an act. In accordance with Rule 6(b) of the Montana Rules of Civil Procedure, the time may be enlarged for good cause shown. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-511, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1704, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Rule 24.9.114 reserved

24.9.115 JURISDICTION TO CONSIDER JURISDICTION (1) The commission shall, at all times, have jurisdiction to determine the jurisdiction of the commission over any particular contested case. In such situations the rules of procedure of the commission shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-511, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1705, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

24.9.117 DISQUALIFICATION OF A MEMBER OF THE COMMISSION

(1) A party may disqualify a member of the commission from presiding over any matter governed by these rules only upon an affirmative showing, made in good faith, of personal bias, a lack of independence, disqualification by law or other ground for disqualification allowed by law.

(2) A party seeking to disqualify a member of the commission may do so only upon the filing of a motion which is supported by a sufficient affidavit showing the particular facts and matters which constitute good cause for disqualification under (1). The party must file the motion and affidavit within ten days of service of the notice of objection or appeal.

(3) Following the filing of a motion and affidavit of disqualification and a reasonable period of time for an opposing party to comment upon it, the commission shall either enter an order of recusal or decline the member's disqualification. That order must specify the particular facts and grounds upon which it is based.

(4) The question of disqualification shall be determined by a quorum of the commission, which may include the member of the commission to be disqualified if his or her participation is required to constitute a quorum or decide the matter.

(5) A member of the commission may make an order or give a notice of recusal or self-disqualification at any time. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-611, 49-2-204, 49-2-205, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1711, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Rule 24.9.118 reserved

24.9.119 EX PARTE COMMUNICATIONS (1) No member of the commission may participate in or initiate any ex parte communication as defined in (2) on the merits of a matter with any party or the department. A member of the commission may engage in a communication concerning administrative or procedural matters where they are necessary under the circumstances and do not adversely affect the substantial rights of a party.

(2) "Ex parte communication" means the act of a party, any person having an interest in the outcome of a contested case, or any other person not authorized by law, communicating with a member of the commission regarding the merits of any contested case. Communications which do not constitute discussions or information regarding an issue of fact or law in a contested case, such as discussions of enlargements of time, scheduling, administrative matters, and/or questions of procedure do not constitute ex parte communications.

(3) The commission may consult with the department regarding the interpretation of a point of law. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-613, 49-2-204, 49-2-505, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1712, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Rule 24.9.120 reserved

24.9.121 OBJECTIONS TO DISMISSAL OF COMPLAINT (1) A party who is dissatisfied with a department decision to dismiss a complaint may seek commission review of the decision by filing a written objection within 14 days after the issuance of the notice of dismissal.

(2) A party who makes an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may file a brief in opposition to the objection. Briefs on objections to the dismissal of a complaint may not exceed ten pages in length and comply with the formatting requirements set forth in ARM 24.9.111. Each party's brief should attach copies of any specific exhibits which the party believes are essential in the commission's consideration of the matter.

(3) Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

(4) The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested by a party and authorized by the commission. The commission may request that the parties present oral argument.

(5) The commission will review an objection to the Human Rights Bureau's decision to dismiss a complaint under an abuse of discretion standard.

(6) If the commission sustains an objection to the dismissal of a complaint, it will reopen the case by remanding it to the department.

(a) If the complaint has not yet been informally investigated, and not more than 90 days (housing cases) or 120 days (non-housing cases) have passed since the date of filing, it will be remanded to the human rights bureau for investigation.

(b) If the complaint has been informally investigated, or if more than 90 days (housing cases) or 120 days (non-housing cases) have passed since the date of filing, it will be remanded to the hearings bureau to give notice of a hearing.

(7) If the commission affirms the dismissal of a complaint, it will notify the parties of its decision in writing within seven days. The charging party has 90 days after receipt of the commission's order affirming the dismissal of a complaint to file the complaint in the appropriate district court. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-511, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1714, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Rule 24.9.122 reserved

24.9.123 APPEAL OF HEARING OFFICER DECISIONS (1) Following entry of a hearing officer decision that resolves the complaint, pursuant to 49-2-505, MCA, parties shall have the opportunity to file an appeal, present briefs, and present oral argument to the commission as provided in this rule.

(2) A party that wants to appeal shall provide notice of appeal to the commission and all parties within 14 days of the issuance of the notice of the hearing officer decision. All appellants shall submit an original (or original copy) and six copies of all submissions for the record unless otherwise directed by the commission.

(3) All briefing must conform to the commission's formatting requirements set forth in ARM 24.9.111. A brief on appeal of a hearing officer decision may not exceed 20 pages in length.

(4) The commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer decision but may not reject or modify the findings of fact unless the commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

(a) A party asserting that a finding of fact is clearly erroneous must identify the specific finding that is in error and then cite to the portion or portions of the record that support the party's assertion that the finding is erroneous.

(b) A party asserting that a damage award is clearly erroneous must point out the findings that are in error and then cite to the portion or portions of the record that support a different calculation of the damages. If a party is asserting an alternative amount for monetary relief, the proposed amount and its method of computation must be set out in the supporting brief and supported by citations to the record. The commission may deny an appeal on the issue of damages if a party fails to specify the amount of damages sought or if a party fails to support that amount with references to the record.

(c) The commission may grant all relief permitted by 49-2-506, MCA, including full affirmative relief.

(5) Unless all parties stipulate otherwise, a party filing an appeal requiring commission review of the complete record, must file six copies of all contested case prehearing submissions, hearing exhibits, a transcript of the hearing, all posthearing submissions, and the hearing officer decision. A party filing an appeal not requiring commission review of the complete record must file six copies of all portions of the contested case record, including the hearing officer decision, required for the commission's review of the appeal.

(6) If an appellant does not intend to file a transcript of the hearing, the appellant must file and serve a supporting brief and the portions of the record required for commission review of the appeal within 20 days of service of the appealing party's notice of appeal. Any opposing party must file and serve an answer brief within ten days of service of the brief supporting the appeal. The appellant must file and serve any reply brief within ten days of service of the answer brief.

(7) If an appellant intends for the commission to review a transcript, and a transcript of the hearing has not been prepared prior to issuance of the hearing officer decision, the appellant must file a notice of intent to file a transcript with the notice of appeal stating that commission review of a transcript of the hearing is required.

(a) After the notice of intent to file an appeal is filed, the appellant must arrange for preparation of a transcript of the hearing at his or her own expense. The appellant must file an original and six copies of the transcript with the commission within 40 days of filing the notice of intent to file an appeal.

(b) If more than one party gives notice of intent to file an appeal, all parties filing an appeal which require review of a transcript of the hearing must share equally in the cost of the transcript and copies.

(c) The appellant must file a supporting brief and the record within 20 days of the date of filing the transcript. Any opposing party must file and serve an answer brief within ten days of service of the supporting brief. The appellant must file and serve any reply brief within ten days of service of the answer brief.

(8) Except upon stipulation of all parties, a transcript shall be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript shall be a verbatim and complete account of all proceedings on the record of the hearing and shall be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.

(9) If an appellant fails to file a brief in support of the appeal within the time provided by this rule, or within any extension of time granted, any opposing party may move to strike the appeal. If an opposing party fails to file a brief in opposition to appeal within the time provided by this rule, or within any extension of time granted, that party will not be heard at oral argument except by permission or at the request of the commission.

(10) When a party has timely filed an appeal of a hearing officer decision and has timely filed a supporting brief, the commission will fix a date, not later than 120 days from the notice of appeal, to provide the parties an opportunity to present oral argument to the commission. Each party is allowed a total of one-half hour of argument before the commission, including cross-appeals. Oral argument may be waived by the parties, except where it is requested by the commission.

(11) A member of the commission may consider procedural motions and enter procedural orders as necessary for commission review.

(12) A member of the commission may conduct a prehearing conference prior to the commission's consideration of the appeal.

(13) The commission shall render a decision which affirms, rejects, modifies, and/or remands the hearing officer decision within 90 days of the hearing of the appeal. The final decision of the commission is the final agency decision.

(History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-505, 49-2-506, 49-2-511, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1717, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Rule 24.9.124 reserved

24.9.125 COMMISSION HEARINGS (1) On the date fixed by the commission for oral argument, a quorum of the commission shall consider objections to dismissals by the Human Rights Bureau and appeals of hearing officer decisions.

(2) Upon motion of the commission, any member of the commission who is absent at the presentation of oral argument may participate in deliberations and the entry of a final decision or order of the commission if he or she, where required, reviews the complete record of the contested case, including a recording or transcript of the oral argument of the parties.

(3) At the time of oral argument, and subject to the rule of the commission chair, any member of the commission may pose questions to a party or his or her representatives. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-511, 49-3-315, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1718, and AMD, 2008 MAR p. 2636, Eff. 12/31/08.)

Subchapter 2

Investigation And Conciliation

24.9.201 LIBERAL CONSTRUCTION; EFFECT OF PARTIAL INVALIDITY (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-2-504, 49-3-304, 49-3-305, 49-3-307, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; REP, 1995 MAR p. 2264, Eff. 10/27/95.)

24.9.202 DEFINITIONS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101, 49-2-201, 49-2-509, 49-3-101, 49-3-312, MCA; AMD, 1989 MAR p. 487, Eff. 4/28/89; REP, 1995 MAR p. 2264, Eff. 10/27/95.)

24.9.203 PREHEARING PROCEDURE: INTRODUCTION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-201, 49-2-501 through 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1987 MAR p. 1093, Eff. 7/17/87.)

24.9.203A SCOPE AND PURPOSE OF RULES (1) The rules in this subchapter describe the procedures followed by the department in investigating and conciliating complaints filed before July 1, 1997. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-504, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.204 COMPLAINT; WHO MAY FILE, TIMELINESS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-3-304, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.205 COMPLAINT; FILING CHARGE ON BEHALF OF AN AGGRIEVED PERSON (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-3-304, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.206 COMMISSION STAFF COMPLAINTS; CLASS ACTIONS BY INDIVIDUALS OR GROUPS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-2-505, 49-3-304, 49-3-308, MCA; NEW, Eff. 1/2/77; AMD, 1982 MAR p. 1395, Eff. 7/16/82; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1995 MAR p. 2264, Eff. 10/27/95; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.207 COMPLAINT; DATE OF FILING (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-3-304, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.208 COMPLAINT; CONTENTS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-3-305, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.209 COMPLAINT; PLACE AND MANNER OF FILING, INSUFFICIENCY, EFFECTIVE DATE OF AMENDMENTS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-3-304, 49-3-305, MCA; NEW, 1/2/77; AMD, 1987 MAR p. 1087, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.210 AMENDMENT OF COMPLAINTS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-2-503, 49-2-504, and 49-2-505, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1093, Eff. 7/17/87; AMD, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.211 RECEIPT OF INFORMATION BY COMMISSION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-2-502, 49-2-503, 49-2-504, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1987 MAR p. 1093, Eff. 7/17/87.)

24.9.212 CONFIDENTIALITY (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA; NEW, Eff. 1/2/77; AMD, 1982 MAR p. 1395, Eff. 7/16/82; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1990 MAR p. 525, Eff. 3/16/90; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.213 COMPLAINT; WITHDRAWAL OF COMPLAINT BY CHARGING PARTY; REDESIGNATION OF COMPLAINT (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-603, 49-2-504, 49-3-307, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.214 INTERVENTION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.215 COMPLAINT; DEFERRAL FROM LOCAL, STATE OR FEDERAL AGENCIES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-2-502, 49-2-503, 49-2-504, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1995 MAR p. 2264, Eff. 10/27/95.)

24.9.216 NOTICE OF FILING OF COMPLAINT (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-3-307, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.217 COMPLAINT; NOTICE TO COMMISSION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-502, 49-3-307, MCA; NEW, Eff. 1/2/77; AMD, 1981 MAR p. 801, Eff. 8/14/81; AMD, 1981 MAR p. 1615, Eff. 11/26/81; REP, 1995 MAR p. 2264, Eff. 10/27/95.)

24.9.218 COMPLAINT, COMMENCEMENT OF INVESTIGATION, MEDIATION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-603, 49-2-504, 49-3-307, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.219 INVESTIGATION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-203, 49-2-504, 49-2-506, 49-3-307, 49-3-309, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.220 EMERGENCY ORDER (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-503, 49-3-306, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.221 INVESTIGATION; FAILURE TO COOPERATE WITH INVESTIGATION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-203, 49-2-504, 49-2-505, 49-3-307, and 49-3-308, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.222 INVESTIGATION; FAILURE OF CHARGING PARTY OR AGGRIEVED PERSON TO COOPERATE OR KEEP THE DEPARTMENT ADVISED OF CHANGES IN ADDRESS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-504, 49-2-509, 49-3-307, 49-3-312, MCA; AMD, 1989 MAR p. 487, Eff. 4/28/89; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.223 INVESTIGATION; FAILURE TO PRODUCE EVIDENCE (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.224 INVESTIGATION; FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-504, 49-3-307, MCA; NEW, Eff. 1/2/77; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1989 MAR p. 487, Eff. 4/28/89; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.225 PROCEDURE ON FINDING OF NO REASONABLE CAUSE

(REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, 49-3-312, MCA; NEW, Eff. 1/2/77; AMD, 1982 MAR p. 1395, Eff. 7/16/82; AMD, 1983 MAR p. 857, Eff. 7/15/83; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1989 MAR p. 487, Eff. 4/28/89; AMD, 1990 MAR p. 525, Eff. 3/16/90; AMD, 1990 MAR p. 1561, Eff. 8/17/90; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.226 CONCILIATION AND SETTLEMENT (REPEALED) (History:

49-2-204, 49-3-106, MCA; IMP, 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA, NEW, Eff. 1/2/77; AMD, 1980 MAR p. 2196, Eff. 7/18/80; AMD, 1983 MAR p. 1833, Eff. 12/16/83; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.227 DISCOVERY (REPEALED) (History: 49-2-505, 49-3-308, MCA;

IMP, 2-4-602, 49-2-201(2), 49-2-504, 49-2-505, MCA; NEW, Eff. 1/2/77; AMD, 1980 MAR p. 2197, Eff. 7/18/80; AMD, 1982 MAR p. 1395, Eff. 7/16/82; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.228 ADOPTION OF MODEL RULES WITH AMENDMENTS

(REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-201, 2-4-202, MCA; NEW, Eff. 1/2/77; AMD, 1980 MAR p. 1134, Eff. 4/11/80; AMD, 1980 MAR p. 2198, Eff. 7/18/80; REP, 1987 MAR p. 1093, Eff. 7/17/87.)

24.9.229 CONTESTED CASES, PREAMBLE AND SUMMARY

(REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-201(2), 49-2-503, 49-2-504, 49-2-505, MCA; NEW, Eff. 1/2/77; AMD, 1982 MAR p. 1395, Eff. 7/16/82; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.230 CERTIFICATION OF A CASE FOR HEARING (REPEALED)

(History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-2-506, 49-3-308, 49-3-312, MCA; NEW, Eff. 1/21/77; AMD, 1980 MAR p. 2198, Eff. 7/18/80; AMD, 1982 MAR p. 1395, Eff. 7/16/82; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1989 MAR p. 487, Eff. 4/28/89; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.231 NOTICE OF CERTIFICATION FOR HEARING (REPEALED)

(History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, 49-3-312, MCA; NEW, Eff. 1/21/77; AMD, 1982 MAR p. 1395, Eff. 7/16/82; AMD, 1987 MAR p. 1088, Eff. 7/17/87; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.232 WHEN THE COMMISSION RECEIVES NOTICE FROM THE ADMINISTRATOR THAT A CASE IS NOW CERTIFIED FOR HEARING, THE COMMISSION SHALL DETERMINE TIME AND PLACE FOR HEARING (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201(2), 49-2-402, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.233 PRESENTATION OF CASE IN SUPPORT OF COMPLAINT (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.234 ANSWER (REPEALED) (History: 49-2-204, MCA; IMP, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.235 CONTESTED CASES; DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-205, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.236 CONTESTED CASES; INFORMAL DISPOSITION, PREHEARING CONFERENCE (REPEALED) (History: 2-15-1706, MCA; IMP, 2-4-603, 49-2-201, 49-2-502, 49-2-504, MCA; NEW, Eff. 1/2/77; AMD, 1979 MAR p. 1069, Eff. 9/14/79; AMD, 1980 MAR p. 1135, Eff. 4/11/80; AMD, 1980 MAR p. 2198, Eff. 7/18/80; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.237 CONTESTED CASES; APPLICATION FOR MORE DEFINITE AND DETAILED STATEMENT (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-401, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.238 CONTESTED CASES; SUBPOENAS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-502, 49-2-201, 49-2-504, 49-2-505, 49-2-203, MCA; NEW, 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.239 CONTESTED CASES; HEARING EXAMINERS (REPEALED) (History: 2-15-1706, MCA; IMP, 2-4-104, 2-4-611, 2-4-612, 49-2-201, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.240 CONTESTED CASE; HEARING (REPEALED) (History: 2-15-706, MCA; IMP, 2-4-612, 49-2-502, 49-2-505, 49-2-201, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.241 CONTESTED CASES; RECORD (REPEALED) (History: 2-15-1706, MCA; IMP, 2-4-614, 49-2-201, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.242 CONTESTED CASES; MOTIONS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-502, 49-2-201, 49-5-505, MCA; NEW, Eff. 1/2/77; AMD, 1982 MAR p. 1395, Eff. 7/16/82; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.243 CONTESTED CASES; EVIDENCE (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-502, 49-2-201, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.244 CONTESTED CASES; EX PARTE CONSULTATIONS (REPEALED) (History: 2-15-1706, MCA; IMP, 2-4-612, 49-2-201, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.245 CONTESTED CASES; PROPOSED ORDERS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-502, 49-2-504, 49-2-505, MCA; NEW, Eff. 1/2/77; AMD, 1979 MAR p. 659, Eff. 7/13/79; AMD, 1979 MAR p. 1069, Eff. 9/14/79; AMD, 1980 MAR p. 1135, Eff. 4/11/80; AMD, 1980 MAR p. 2198, Eff. 7/18/80; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.246 CONTESTED CASES; FINAL ORDERS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.247 CONTESTED CASES; NOTIFICATION OF ORDERS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-505, 49-2-506, 49-2-507, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.248 CONTESTED CASES; ENFORCEMENT ORDERS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-404, 49-2-508, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.249 DECLARATORY RULINGS AND MISCELLANEOUS PROVISIONS, PREAMBLE AND SUMMARY (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-501, 49-2-502, 49-2-201, 49-3-503, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.250 DECLARATORY RULINGS; INSTITUTION OF PROCEEDINGS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-501, 49-2-502, 49-2-201, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.251 DECLARATORY RULINGS; CONTENT OF PETITION (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-501, 49-3-502, 49-2-201, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.252 DECLARATORY RULINGS; FILING AND NOTIFICATION OF DISPOSITION OF PETITION (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-501, 49-2-502, 49-2-201, 49-2-505, MCA; NEW, Eff. 1/2/77; AMD, 1981 MAR p. 803, Eff. 8/14/81; AMD, 1981 MAR p. 1616, Eff. 11/26/81; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.253 DECLARATORY RULINGS; NOTICE OF HEARING (REPEALED)

(History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-501, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.254 DECLARATORY RULING; CONDUCT OF HEARING

(REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-501, 59-2-505, 49-2-506, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.255 DECLARATORY RULING; EFFECT OF RULING (REPEALED)

(History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-501, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; AMD, 1981 11/26/81; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.256 MISCELLANEOUS PROVISION; SUBPOENAS AND

ENFORCEMENT (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-203, 49-2-501, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.257 MISCELLANEOUS PROVISIONS; REPRESENTATION

(REPEALED) (History: 2-15-1706, MCA; IMP, 2-4-104, 2-4-602, 49-2-201, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.258 MISCELLANEOUS PROVISIONS; SERVICE (REPEALED)

(History: 2-15-1706, MCA; IMP, 2-4-106, 49-2-201, 49-2-501, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.259 MISCELLANEOUS PROVISIONS: AVAILABILITY OF FINAL

ORDERS AND DECISIONS (REPEALED) (History: 2-15-1706, MCA; IMP, 2-4-623, 49-2-201, 49-2-505, MCA; NEW, Eff. 1/2/77; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.260 TIME FOR REVIEW OF HEARING EXAMINER DECISIONS

(REPEALED) (History: 2-15-1706, MCA; IMP, 2-4-302, MCA; NEW, 1980 MAR p. 1710, Eff. 6/27/80; AMD, 1983 MAR p. 351, Eff. 4/29/83; REP, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.261 DISMISSAL OF COMPLAINT ALSO PENDING IN COURT

(REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-501, 49-2-505, MCA; NEW, 1981 MAR p. 1619, Eff. 11/26/81; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.262 ISSUANCE OF RIGHT TO SUE LETTER (REPEALED)

(History: 2-15-1706, 49-2-204, 49-3-106, MCA; IMP, 49-2-509, 49-3-312, MCA; NEW, 1983 MAR p. 857, Eff. 7/15/83; REP, 1989 MAR p. 487, Eff. 4/28/89.)

24.9.262A ISSUANCE OF RIGHT TO SUE LETTER WHEN REQUESTED BY A PARTY (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-509, 49-3-312, MCA; NEW, 1989 MAR p. 487, Eff. 4/28/89; AMD, 1990 MAR p. 1561, Eff. 8/17/90; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.263 CONTENTS OF RIGHT TO SUE LETTER (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-509, 49-3-312, MCA; NEW, 1983 MAR p. 857, Eff. 7/15/83; AMD, 1989 MAR p. 487, Eff. 4/28/89; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.264 EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-509, 49-3-312, MCA; NEW, 1983 MAR p. 857, Eff. 7/15/83; AMD, 1989 MAR p. 487, Eff. 4/28/89; AMD, 1990 MAR p. 1561, Eff. 8/17/90; AMD, 1995 MAR p. 2264, Eff. 10/27/95; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.265 DOCUMENT FORMAT, FILING, SERVICE AND TIME (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-106, 49-2-504, 49-2-509, 49-3-307, 49-3-312, MCA; NEW, 1991 MAR p. 308, Eff. 3/15/91; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

Subchapter 3

Contested Case Hearing

24.9.301 PURPOSE AND SCOPE OF RULES (REPEALED) (History: 49-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.302 DEFINITIONS RELATING TO CONTESTED CASES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-611, 2-15-1706, 49-2101, 49-2-201, 49-2-505, 49-3-101, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.303 JURISDICTION TO CONSIDER JURISDICTION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.304 INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-612, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.305 PRESENTATION OF A CASE IN SUPPORT OF A COMPLAINT (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-2-510, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.306 APPOINTMENT AND AUTHORITY OF HEARING EXAMINER (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-611, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.307 DISQUALIFICATION OF A HEARING EXAMINER OR MEMBER OF THE COMMISSION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-611, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.308 EX PARTE CONSULTATIONS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-613, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.309 CONTESTED CASE RECORD (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-614, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1990 MAR p. 525, Eff. 3/16/90; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.310 PLACE OF HEARING (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.311 FORMAL PROCEEDINGS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.312 INFORMAL PROCEEDINGS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-604, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.313 INFORMAL DISPOSITION (1) In accordance with the provisions of ARM 24.9.311 a hearing examiner may make an informal disposition of any matter.

(2) Where a charging party seeks to withdraw a complaint and the only issue remaining to resolve a contested case is the nature, scope and extent of affirmative relief to protect public interests, the department may request informal disposition of a contested case to grant such relief in a proposed order.

(3) The hearing examiner may enter a proposed order upon agreed settlements, consent orders and defaults by means of informal disposition, including telephonic hearings. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-604, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.314 DOCUMENT FORMAT, FILING AND SERVICE (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-106, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1991 MAR p. 308, Eff. 3/15/91; AMD, 1993 MAR p. 298, Eff. 2/26/93; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.315 TIME (1) In computing any period of time for acts required by any of the commission's rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the department offices are closed on such day. In that event, the period runs until the end of the next day when the department offices are open which is not one of the aforementioned days. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in computation. A half holiday will be considered as other days and not as a holiday.

(2) Whenever a party has a right or is required to do some act under any of the commission's rules within a prescribed period after service of a notice or other paper upon the party and service is by mail, three days shall be added to the prescribed period. The date of service is computed from the date on which service is made by mail, as shown by the certificate of service or date of mailing. Service by mail is complete upon mailing.

(3) Except as to dates fixed by statute and not subject to modification, the hearing examiner or the commission may enlarge the time to perform an act. The time may be enlarged for cause shown, with or without a motion or notice, when a request for enlargement of time is made prior to the expiration of the time in which the act is to be performed. If the request is made after the expiration of the specified period in which to act, enlargement may be allowed only upon a showing of excusable neglect in the failure to act. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1991 MAR p. 308, Eff. 3/15/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.316 APPLICATION OF RULES AND UNREPRESENTED PARTIES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.317 APPEARANCE, DISMISSAL AND DEFAULT (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-106, 2-4-603, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.318 INTERVENTION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.319 CLASS ACTIONS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.320 MOTIONS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.321 EVIDENCE (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.322 DISCOVERY (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-602, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.323 AMENDMENT OF COMPLAINT (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-501, 49-2-505, 49-3-304, and 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.324 PREHEARING CONFERENCES AND ORDERS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.325 SUBPOENAS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-104, 2-4-602, 49-2-203, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.326 HEARING (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-612, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.327 PROPOSED ORDERS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-621, 49-2-505, 49-2-506, 49-2-507, 49-3-308, 49-3-309, 49-3-310, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.328 NOTIFICATION OF ENTRY OF PROPOSED ORDER (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-621, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.329 EXCEPTIONS TO PROPOSED ORDERS (1) Following entry of a proposed order in a contested case and prior to consideration of that order by the commission, parties adversely affected by the proposed order shall have the opportunity to file exceptions, present briefs and present oral argument as provided in this rule.

(a) Once a proposed order is entered in a contested case, all parties shall thereafter submit an original or original copy and six copies of all submissions for the record unless otherwise directed by the commission. The department may reject and return any submission which does not include the required number of copies.

(2) Pursuant to 2-4-621(3), MCA, the commission in its final order may reject or modify the conclusions of law and interpretations of administrative rules in the proposed order but may not reject or modify the findings of fact unless the commission first reviews the complete record. The commission may accept or reduce any recommended award or penalty but may not increase it without reviewing the complete record.

(a) Unless all parties stipulate otherwise, a party filing exceptions requiring commission review of the complete record, must file six copies of all contested case pre-hearing submissions, hearing exhibits, a transcript of the hearing, all post-hearing submissions and the proposed order.

(b) A party filing exceptions not requiring commission review of the complete record must file six copies of all portions of the contested case record, including the proposed order, required for the commission's review of the exceptions.

(3) If a party making exceptions does not intend to file a transcript of the hearing, the party must file and serve the exceptions, a supporting brief and the portions of the record required for commission review of the exceptions within 20 days of service of the proposed order. Any opposing party must file and serve an answer brief within ten days of service of the exceptions and supporting brief. The party making exceptions must file and serve any reply brief within ten days of service of the answer brief.

(4) If a party making exceptions intends for the commission to review a transcript of the hearing and:

(a) a transcript of the hearing has been prepared and filed with the commission prior to issuance of the proposed order, the party must file and serve the exceptions, a supporting brief and the record within 20 days of service of the proposed order. Any opposing party must file and serve an answer brief within ten days of service of the exceptions and supporting brief. The party making exceptions must file and serve any reply brief within ten days of service of the answer brief.

(b) a transcript of the hearing has not been prepared and filed prior to issuance of the proposed order,

(i) within 20 days of service of the proposed order, a party making exceptions must file a notice of intent to file exceptions stating that commission review of a transcript of the hearing is required.

(ii) After the notice of intent to file exceptions is filed, a party making exceptions must arrange for preparation of a transcript of the hearing at his or her own expense. The party making exceptions must file an original and six copies of the transcript with the commission within 40 days of filing the notice of intent to file exceptions.

(iii) If more than one party gives notice of intent to file exceptions, all parties making exceptions which require review of a transcript of the hearing must share equally in the cost of the transcript and copies.

(iv) A party making exceptions must file the exceptions, a supporting brief and the record within 20 days of the date of filing the transcript. Any opposing party must file and serve an answer brief within ten days of service of the exceptions and supporting brief. The party making exceptions must file and serve any reply brief within ten days of service of the answer brief.

(5) No enlargement of time will be allowed for compliance with any of the requirements of this rule except on a showing of good cause.

(6) Except upon stipulation of all parties, a transcript shall be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the case. A transcript shall be a verbatim and complete account of all proceedings on the record of the hearing and shall be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the case.

(7) Where no party files exceptions to a proposed order within the time permitted by this rule, commission review shall be upon the proposed order under the provisions of 2-4-621(3), MCA.

(8) If a party making exceptions fails to file a brief in support of exceptions within the time provided by this rule, or within any extension of time granted, any opposing party may move to strike the exceptions. If an opposing party fails to file a brief in opposition to exceptions within the time provided by this rule, or within any extension of time granted, that party will not be heard at oral argument except by permission of the commission.

(9) When a party has timely filed exceptions to a proposed order and has timely filed a supporting brief, the commission will fix a date to provide the parties an opportunity to present oral argument to the commission. Each party is allowed one-half hour of argument before the commission. Oral argument may be waived by the parties.

(10) The chair of the commission, his or her designee, or a hearing examiner appointed by the commission may consider procedural motions and enter procedural orders as necessary for commission review.

(11) The commission may appoint a member of the commission or hearing examiner for the purpose of conducting a prehearing conference prior to commission consideration of exceptions. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-621, 2-4-623, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1990 MAR p. 525, Eff. 3/16/90; AMD, 1993 MAR p. 560, Eff. 2/26/93; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.330 COMMISSION HEARINGS TO CONSIDER EXCEPTIONS (1) On the date fixed by the commission for oral argument upon the exceptions of the parties, a quorum of the commission shall hear oral argument.

(2) Any member of the commission who is absent at the presentation of oral argument may participate in deliberations and the entry of a final decision or order of the commission in a contested case if he or she, where required, reviews the complete record of the contested case, including a recording or transcript of the oral argument of the parties.

(3) At the time of oral argument, and subject to the rule of the commission chair, any member of the commission may pose questions to a party, his or her representatives. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-621, 2-4-623, 49-2-505, 49-3-308, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.331 FINAL ORDERS (1) Where no exceptions to a proposed order have been made by the parties and commission consideration is upon the order itself, the commission may reject or modify conclusions of law contained in the order.

The commission may not reject or modify the findings of fact contained in the proposed order unless a party makes exceptions in accordance with ARM 24.9.329 or the commission orders a review upon the complete record of the contested case.

(2) The commission may adopt the proposed order as its final order, and must rule upon exceptions made by the parties. It may also enter its separate final order, with findings of fact, conclusions of law and orders in accordance with 2-4-623, MCA.

(3) All orders of monetary relief must state the basis and method of computation for amounts awarded. If a party fails to propose findings of fact in support of his or her claim for specific monetary relief, the commission may require the parties to submit the necessary computation required for relief or may decline the relief.

(4) Regardless of the claims of the parties, the commission may grant all relief permitted by 49-2-506 and 49-3-309, MCA, including full affirmative relief in the public interest, subject to the provisions of 2-4-621, MCA with respect to an increase of award over that recommended in the proposed order. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-623, 49-2-505, 49-2-506, 49-2-507, 49-3-308, 49-3-309, 49-3-310, MCA; NEW, 1988 MAR p. 1194, Eff. 6/10/88.)

24.9.327

DEPARTMENT OF LABOR AND INDUSTRY

24-430

QTR DATE

ADMINISTRATIVE RULES OF MONTANA

Unofficial Version

Subchapter 4

Declaratory Rulings

24.9.401 PURPOSE AND SCOPE OF RULES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-204, 49-3-106, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.402 CONSTRUCTION OF STATUTES AND RULES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-401, 49-2-402, 49-2-403, 49-3-105, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.403 FORM AND CONTENT OF PETITION (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-401, 49-3-105, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.404 FILING AND DOCKETING FOR HEARING (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-204, 49-3-106, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.405 APPOINTMENT OF HEARING EXAMINER AND AUTHORITY (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-204, 49-3-106, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.406 NOTICE (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-204, 49-3-106, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.407 PARTIES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-204, 49-3-106, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.408 PLACE OF HEARING (1) Except as provided in (2), hearings of petitions for declaratory rulings will be conducted at Helena, Lewis and Clark County, Montana.

(2) The hearing examiner or commission may conduct the hearing of a petition for declaratory ruling in a place other than Helena, Montana, upon the request of the petitioner or a party for good cause. The hearing examiner or the commission may, on motion of a party or its own motion, conduct declaratory ruling proceedings at any place within the state of Montana to assure the conduct of a fair hearing. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-401, 49-3-105, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.409 PREHEARING CONFERENCES (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-204, 49-3-106, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; AMD, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.410 NATURE OF HEARINGS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 2-4-603, 2-4-604, 49-2-401, 49-3-105, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.411 PROPOSED ORDERS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 2-4-621, 2-4-623, 49-2-401, 49-3-104, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.412 FINAL ORDERS (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 2-4-623, 49-2-401, 49-3-105, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.413 EFFECT OF DECLARATORY RULING (1) Commission rulings and orders on petitions for a declaratory ruling are binding only upon the commission and the parties to the petition.

(2) The commission may limit the scope and application of the ruling of order to the facts or the situation presented by the petition and the evidence. The commission may also limit the precedential weight it will give to any such ruling or order. (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-401, 49-3-105, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88.)

24.9.414 INCORPORATION OF OTHER RULES BY REFERENCE (REPEALED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-501, 49-2-401, 49-3-105, MCA; NEW, 1988 MAR p. 2308, Eff. 10/28/88; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

Subchapter 5 reserved

Subchapter 6

Proof of Unlawful Discrimination

24.9.601 PURPOSE OF THESE RULES REGARDING PROOF OF UNLAWFUL DISCRIMINATION (1) These rules regarding proof of unlawful discrimination are intended to provide general statements of what must be proved to establish unlawful discrimination in various kinds of complaints. They are not intended to be exhaustive statements of the applicable law, but general guidelines and informational summaries of the law. Practitioners appearing in cases before the department or commission should also refer to the statutes, the balance of the commission's rules, the department's rules, and the federal, state, commission and department decisions addressing the issues in their particular cases. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-301 through 49-2-404, 49-3-103, 49-3-104, 49-3-201 through 49-3-209, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.602 MEMBERSHIP IN A PROTECTED CLASS (1) "Membership in a protected class" means belonging to a group of persons who are afforded protection against discrimination because of race, creed, color, sex (including pregnancy), physical or mental disability, age, marital status, familial status, national origin or political beliefs or ideas as set forth in the act or code.

(2) The person alleging discrimination has the burden of proving that the charging party or other aggrieved person is a member of a protected class. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, and 49-3-208, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.603 RETALIATION AND COERCION PROHIBITED (1) It is unlawful to retaliate against or otherwise discriminate against a person because the person engages in protected activity. A significant adverse act against a person because the person has engaged in protected activity or is associated with or related to a person who has engaged in protected activity is illegal retaliation. "Protected activity" means the exercise of rights under the act or code and may include:

(a) aiding or encouraging others in the exercise of rights under the act or code;

(b) opposing any act or practice made unlawful by the act or code; and

(c) filing a charge, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce any provision of the act or code.

(2) Significant adverse acts may include the following:

(a) violence or threats of violence, malicious damage to property, coercion, intimidation, harassment, the filing of a factually or legally baseless civil action or criminal complaint, or other interference with the person or property of an individual;

(b) discharge, demotion, denial of promotion, denial of benefits or other material adverse employment action;

(c) expulsion, blacklisting, denial of privileges or access, or other action adversely affecting the availability of goods, services, facilities, or advantages of a public accommodation;

(d) eviction, denial of services or privileges, or other action adversely affecting the availability of housing opportunities; and

(e) denial of credit, financing, insurance, educational, governmental or other services, benefits or opportunities.

(3) When a respondent or agent of a respondent has actual or constructive knowledge that proceedings are or have been pending with the department, with the commission or in court to enforce a provision of the act or code, significant adverse action taken by respondent or the agent of respondent against a charging party or complainant while the proceedings were pending or within six months following the final resolution of the proceedings will create a disputable presumption that the adverse action was in retaliation for protected activity. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-301, 49-3-209, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.604 DISCRIMINATION PROHIBITED--EMPLOYMENT (1) Except as provided in 49-2-303, 49-2-308 and 49-3-201, MCA, it is unlawful for an employer, agent of an employer, employment agency or labor organization to discriminate against a person in the terms, conditions or privileges of employment because of a person's membership in a protected class.

(2) Terms, conditions or privileges of employment which are subject to the act and code include:

- (a) recruitment, advertising and job application procedures;
- (b) hiring, promotion, upgrading, award of tenure, transfer, layoff, discipline, discharge, termination of employment, right to return from layoff, and rehiring;
- (c) rates of pay or compensation and changes in compensation;
- (d) job assignments, job classifications, organizational structures, position descriptions, lines of progression and seniority lists;
- (e) leaves of absence, sick leave or any other leave;
- (f) fringe benefits available through employment, whether or not administered by the employer;
- (g) selection and financial support for training, including apprenticeships, professional meetings, conferences or other related activities;
- (h) social and recreational activities sponsored by an employer, agent of an employer, employment agency or labor organization; and
- (i) any other term, condition or privilege of employment.

(3) Examples of practices which may constitute unlawful employment discrimination include the following:

- (a) denying, qualifying, or limiting a term, condition, or privilege of employment because of a person's membership in a protected class or protected activity;
- (b) subjecting a person to harassment in the workplace because of the person's membership in a protected class or protected activity;
- (c) failing to make reasonable accommodation as further explained in ARM 24.9.606 and 24.9.608;
- (d) segregating or classifying a person in a way that adversely affects employment status or opportunities because of membership in a protected class;
- (e) participating in a contract or other arrangement (including an arrangement with an organization providing fringe benefits or an organization providing training or apprenticeship programs) that has the effect of discriminating against persons in the terms, conditions or privileges of employment because of membership in a protected class;

(f) using standards, criteria or methods of administering or managing employment opportunities which discriminate in the terms, conditions or privileges of employment because of membership in a protected class or which perpetuate the denial of equal employment opportunities because of membership in a protected class;

(g) using or administering qualification standards, employment tests or other selection criteria that screen out or tend to screen out members of a protected class; and

(h) discriminating against a person in the terms, conditions or privileges of employment because the person has a relationship with or otherwise associates with a member of a protected class. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-202, 49-2-303, 49-2-308, 49-3-201, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.605 EMPLOYMENT DISCRIMINATION: REASONABLE DEMANDS/BONA FIDE OCCUPATIONAL QUALIFICATION EXCEPTIONS (1) It is not unlawful employment discrimination to make a distinction based on age, physical or mental disability, marital status, or sex when the reasonable demands of the position or program require the distinction.

(2) The commission construes the exceptions contained in this rule strictly, against allowing the exception.

(3) The commission construes the statutory exception permitting distinctions based on age, marital status and sex in accordance with the legal standards for "bona fide occupational qualifications" under section 703(e)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000-2(e)(1)) and section 4(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(f)).

(4) The commission construes the statutory exception permitting distinctions based on physical or mental disability in accordance with the legal standards for determining whether a person is a "qualified individual with a disability" under section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)).

(5) These exceptions are affirmative defenses. A respondent claiming an exception has the burden of proof on the issue. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101(1), 49-2-101(15), 49-2-303, 49-3-101(1), 49-3-101(3), 49-3-101(5), 49-3-201, 49-3-202, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.606 FAILURE TO MAKE REASONABLE ACCOMMODATION--
EMPLOYMENT DISCRIMINATION BECAUSE OF A DISABILITY

(1) It is an unlawful discriminatory practice for an employer, agent of an employer, employment agency or labor organization to:

(a) fail to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee, employment applicant or union member with a physical or mental disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of the business in question; or

(b) deny equal employment opportunities to a person with a physical or mental disability because of the need to make a reasonable accommodation to the person's disability so that the person can perform the essential functions of an employment position.

(2) A person with a physical or mental disability is qualified to hold an employment position if the person can perform the essential functions of the job with or without a reasonable accommodation for the person's physical or mental disability. If an employer has prepared a written description before advertising or interviewing applicants, the description is evidence of the essential functions of the job.

(3) "Reasonable accommodation" to a person with a physical or mental disability for the purposes of enabling the person to perform the essential functions of an employment position may include:

(a) making existing facilities used by employees readily accessible to and usable by individuals with physical or mental disabilities; and

(b) job restructuring, part-time or modified work schedules, reassignment to vacant positions which the employee is qualified to hold, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations or training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with physical or mental disabilities.

(4) An accommodation to a person with a physical or mental disability for the purpose of enabling the person to perform the essential functions of an employment position is reasonable unless it would impose an undue hardship upon the employer.

(5) For purposes of determining whether an accommodation to a physical or mental disability is reasonable, "undue hardship" means an action requiring significant difficulty or extraordinary cost when considered in light of:

- (a) the nature and expense of the accommodation needed;
 - (b) the overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources of the facility, and other impacts of the accommodation on the operation of the facility;
 - (c) the overall financial resources of the business, the overall size of the business of the employer with respect to the number of employees, and the number and type and location of the facilities of the employer; and
 - (d) the type of operation or operations of the employer, including composition, structure, and functions of the work force of the employer, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.
- (6) An accommodation to a person with a physical or mental disability for the purpose of enabling the person to perform the essential functions of an employment position is not reasonable if it would endanger the health or safety of any person.
- (7) If an employer defends an adverse employment action against a person with a physical or mental disability on the grounds that an accommodation would endanger the health or safety of a person, the employer's failure to independently assess whether the accommodation would create a reasonable probability of substantial harm will create a disputable presumption that the employer's justification is a pretext for discrimination on the basis of disability.
- (8) Independent assessment of the risk of substantial harm is evaluation by the employer of the probability and severity of potential injury in the circumstances, taking into account all relevant information regarding the work and medical history of the person with the disability before taking the adverse employment action in question. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101(15), 49-3-101(3), 49-3-202, 49-3-210, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.607 PROHIBITED MEDICAL EXAMINATIONS AND INQUIRIES--
EMPLOYMENT DISCRIMINATION BASED ON DISABILITY

(1) An employer, agent of an employer, employment agency or labor organization shall not require medical examinations or make inquiries of employees for the purposes of determining whether an employee has a physical or mental disability or to determine the nature or severity of a disability unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(2) Use of an employment application form or process which requires a medical examination or makes an inquiry of a job applicant for the purpose of determining whether a person has a physical or mental disability or to determine the nature or severity of a physical or mental disability prior to an offer of employment constitutes a violation of 49-2-303(1)(c), MCA and is evidence of a violation of 49-2-303(1)(a), MCA unless the form or process complies with the requirements of this rule.

(3) An employer, agent of an employer, employment agency or labor organization may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(4) An employer, agent of an employer, employment agency or labor organization may require a medical examination of a person after an offer of employment has been made and prior to the commencement of the employment duties and may condition the offer of employment on the results of the examination if:

(a) all entering employees or union members in the same job category are subjected to the same examination regardless of disability;

(b) information obtained regarding the medical condition or history of a person is treated as a confidential medical record; and

(c) information obtained is collected and maintained in accordance with the requirements of the Americans with Disabilities Act (ADA) where the employer, employment agency or labor organization is subject to ADA requirements.

(5) An employer, agent of an employer, or labor organization may conduct voluntary medical examinations, including voluntary medical histories, that are part of a bona fide employee or union health program. Information obtained pursuant to a bona fide employee or union health program is a confidential medical record and subject to the same confidentiality requirements and restrictions on disclosure stated in (4).

(6) An employer, after a conditional offer of employment to a prospective employee, may inquire whether the prospective employee is certified or eligible to be certified as vocationally disabled for the purposes of the subsequent injury fund, pursuant to Title 39, chapter 71, part 9 of the Montana Workers' Compensation Act. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-303, 49-3-201, 49-3-202, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.608 FAILURE TO ACCOMMODATE--EMPLOYMENT

DISCRIMINATION BASED ON RELIGION (1) It is an unlawful discriminatory practice for an employer, an agent of an employer, an employment agency or a labor organization to discriminate against a person in the terms, conditions or privileges of employment because of religion.

(2) The term religion includes all aspects of religious observance, practice and belief.

(3) For purposes of providing equal employment opportunities, an employer has a duty to accommodate an employee's religion unless to do so would cause a more than de minimis hardship on the conduct of the business.

(a) An employee whose religion conflicts with an employment requirement has a duty to inform the employer of the conflict in a timely manner.

(b) Once informed of a religion based conflict, an employer has a duty to initiate good faith efforts to accommodate the conflict. An employer can demonstrate that an accommodation to an employee's religious belief or practice would cause a more than de minimis hardship with proof that the accommodation would require a significant cost to the business, would violate contract obligations which cannot be reconciled, or would otherwise cause a more than de minimis hardship to the employer.

(c) The employer and the employee have a mutual obligation to engage in bilateral cooperation in a search for a reasonable resolution of conflicts which may arise between an employer's business and an employee's religion.

(4) Determining whether an accommodation can be made and whether a more than de minimis hardship would occur for purposes of the provisions of the act or code prohibiting religious discrimination in employment must be made on a case by case basis. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-303, 49-3-201, 49-3-202, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.609 DISCRIMINATION PROHIBITED--PUBLIC ACCOMMODATION

(1) Except as provided in 49-2-304, MCA, it is unlawful for an owner, lessee, manager, agent or employee of a public accommodation to deny equal access to services, goods, facilities, advantages or privileges to a person because of membership in a protected class.

(2) Unlawful discrimination in a public accommodation may include the following:

(a) imposing or applying qualification standards, admittance tests or other selection criteria that screen out or tend to screen out a person or persons who are members of a protected class unless the standard, test or other selection criteria can be shown to be necessary for the provision of the goods, services, facilities, advantages or privileges being offered;

(b) denying equal access to the goods, services, facilities, advantages or privileges of a public accommodation to a person because of the person's relationship or association with a member of a protected class; or

(c) subjecting a member of the public or patron to harassment in the public accommodation because of the person's membership in a protected class or protected activity.

(3) Unlawful discrimination against a person with a disability in a public accommodation may include:

(a) failing to make reasonable modifications in policies, practices or procedures when the modifications are necessary to afford the goods, services, facilities, advantages or privileges to persons with disabilities unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of its goods, services, facilities, advantages or privileges;

(b) failing to take necessary action to ensure that a person with a disability is not excluded, denied services, segregated or otherwise denied equal access because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, advantages or privileges being offered or would result in an unreasonable expense or undue burden after considering the circumstances of the public accommodation;

(c) failing to remove architectural barriers and communication barriers in existing facilities that are structural in nature and deny equal access to persons with disabilities when the removal is readily achievable; or

(d) failing to make goods, services, facilities, advantages and privileges available through alternative methods if removal of barriers that deny equal access to persons with disabilities is not readily achievable. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101(15), 49-2-304, 49-3-101(3), 49-3-208, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.610 BURDEN OF PROOF--DISPARATE TREATMENT (1) To prove a claim of unlawful discrimination or illegal retaliation based on disparate treatment, a charging party must establish a prima facie case in support of the alleged violation of the act or code.

(2) A prima facie case of discrimination or retaliation based on disparate treatment means evidence from which the trier of fact can infer that adverse action against the charging party was motivated by respondent's consideration of charging party's membership in a protected class, protected activity, or association with or relation to a person who is a member of a protected class or who has engaged in protected activity.

(a) The elements of a prima facie case will vary according to the type of charge and the alleged violation, but generally consist of proof:

(i) That charging party is a member of a protected class or engaged in protected activity;

(ii) That charging party sought and was qualified for an employment, housing, service, credit or other opportunity made available by the respondent; and

(iii) That charging party was denied the opportunity, or otherwise subjected to adverse action by respondent in circumstances raising a reasonable inference that charging party was treated differently because of membership in a protected class or because of protected activity.

(b) Examples of evidence establishing a reasonable inference that charging party was treated differently because of membership in a protected class or because of protected activity include:

(i) proof that respondent continued to make the employment, housing, service, credit, or other opportunity available to persons who are not members of the same protected class as charging party;

(ii) proof that similarly situated persons outside the protected class were treated more favorably;

(iii) proof that there was a close proximity in time between protected activity of the charging party and adverse action by the respondent;

(iv) proof that respondent intended to discriminate against persons of the protected class; or

(v) other proof that there is a causal connection between adverse action by the respondent and the charging party's membership in a protected class or protected activity.

(3) Once a charging party establishes a prima facie case of unlawful discrimination or illegal retaliation based on circumstantial evidence of disparate treatment, the respondent must produce evidence of a legitimate, nondiscriminatory reason for the challenged action.

(4) If a respondent produces evidence of a legitimate, nondiscriminatory reason for a challenged action in response to a prima facie case, the charging party must demonstrate that the reason offered by the respondent is a pretext for unlawful discrimination or illegal retaliation. The charging party can prove pretext with evidence that the respondent's acts were more likely based on an unlawful motive or indirectly with evidence that the explanation for the challenged action is not credible and is unworthy of belief.

(5) If a charging party has established a prima facie case with direct evidence of unlawful discrimination or illegal retaliation, the respondent must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and is unworthy of belief. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-3-208, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.611 BURDEN OF PROOF--MIXED MOTIVE CASE (1) When the charging party proves that the respondent engaged in unlawful discrimination or illegal retaliation but the respondent proves the same action would have been taken in the absence of the unlawful discrimination or illegal retaliation, the case is a mixed motive case. In a mixed motive case, the commission will order respondent to refrain from the discriminatory conduct and may impose other conditions to minimize future violations, but the commission will not issue an order awarding compensation for harm to the charging party caused by an adverse action that would have been taken by the respondent regardless of an unlawful discriminatory or retaliatory motive. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-3-208, 49-3-209, MCA; NEW, 1996 MAR p. 28971, Eff. 10/25/96.)

24.9.612 BURDEN OF PROOF--DISPARATE IMPACT (1) To prevail on a claim of unlawful discrimination based on disparate impact, a charging party must establish a prima facie case by proving that one or more identified practices or policies of the respondent have a significant or substantial adverse effect on the charging party's protected class.

(2) Evidence of a respondent's intent to discriminate against members of a protected class is not required to establish a prima facie case of unlawful discriminatory practice based on disparate impact.

(3) Once a charging party establishes a prima facie case of unlawful discrimination based on a charge of disparate impact, the respondent must produce evidence of a legitimate business justification for the challenged practices or policies. Proof of a legitimate business justification requires admissible evidence that the challenged practices or policies are job-related and consistent with business necessity.

(4) If a respondent produces admissible evidence of a legitimate business justification for a challenged business practice or policy, the charging party must prove that the articulated justification offered by the respondent is a pretext for unlawful discrimination. The charging party may prove pretext directly with evidence that an unlawful motive more likely motivated the respondent, or indirectly with evidence that the articulated business justification is not worthy of belief or that there are other practices or policies available which are equally effective in serving the legitimate business interests of the respondent which do not have similar discriminatory effects upon members of a protected class. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-3-208, MCA; NEW, 1996 MAR p. 2871, Eff. 10/25/96.)

Subchapter 7 reserved

Subchapter 8

General Provisions

24.9.801 DEFINITIONS (REPEALED) (History: 49-2-204, MCA; IMP, 49-2-101, MCA; NEW, Eff. 1/2/77; AMD, 1982 MAR p. 1691, Eff. 7/16/82; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.802 COMMISSION MEETINGS: QUORUM; DECISION MAKING AUTHORITY (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-201, 49-2-502, 49-2-505, MCA; NEW, Eff. 1/2/77; AMD, 1981 MAR p. 807, Eff. 8/14/81; AMD, 1981 MAR p. 1621, Eff. 11/26/81; REP, 1995 MAR p. 2264, Eff. 10/27/95.)

24.9.803 RETALIATION (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/2/77; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.804 AFFIRMATIVE ACTION REQUIRED BY THE COMMISSION (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-203, MCA; NEW, Eff. 1/2/77; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.805 EMPLOYMENT RECORDS (1) All employers, labor organizations, employment agencies, and government agencies shall keep adequate records to show:

- (a) The number of employees who are white (not of hispanic origin), black (not of hispanic origin), hispanic, Asian or Pacific Islander, American Indian or Alaskan Native in each job category;
 - (b) The number of males and females in each racial group and job category;
- and

- (c) The age of each employee in each job category.
- (2) Records which fulfill the requirements of the U.S. equal employment opportunity commission recordkeeping requirements are sufficient to meet the requirements of this rule.
- (3) Information about racial or ethnic identity may be acquired by visual survey of the work force and, if at all possible, should not be by direct inquiry. Such information shall be kept separately from other personnel records and shall be maintained as total numbers without identification of individuals.
- (4) All personnel records made or kept by an employer, including, but not necessarily limited to, application forms and other records related to hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation and selection for training or apprenticeship, shall be preserved for 2 years from the date the record is made or from the date of the personnel action involved, whichever occurs later.

(5) If a discrimination complaint is filed, the respondent shall preserve all personnel records relevant to the complaint until final disposition of the complaint. Personnel records relevant to a complaint include personnel records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers completed by an unsuccessful applicant and all other candidates for the same position.

(6) Labor organizations shall preserve membership or referral records, including applications for membership or referral for two years from the date the records are made. If a discrimination complaint is filed, a labor organization shall preserve all records relevant to the complaint until final disposition of the complaint. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-102, 49-2-303, 49-3-201, MCA; NEW, Eff. 1/2/77; AMD, 1991 MAR p. 1841, Eff. 9/27/91.)

Subchapter 9 reserved

Unofficial Version

Subchapter 10

Sex Discrimination in Education

24.9.1001 PURPOSE (1) The purpose of this subchapter is to provide guidelines that will enable educational institutions to prevent and eliminate discrimination on the basis of sex. These rules are interpretive rules. The fact that a particular situation is not addressed in these rules shall not be construed to preclude a cause of action under the Montana Human Rights Act or the Governmental Code of Fair Practices. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1002 DEFINITIONS (1) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by an educational institution.

(2) "Auxiliary services" for students includes but is not limited to: health care, food services, playing fields, public accommodations on campus, speech therapy, remedial programs, mental health programs, and special programs.

(3) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical or vocational school; or agent of an educational institution.

(4) "Extracurricular activity" includes school-sponsored or supported clubs, teams, or activities of general or specific interest not part of classroom instruction.

(5) "Housing accommodation" means a building or portion of a building whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(6) "Person" means one or more individuals, and includes applicants for admission as well as students.

(7) "Physical education activities involving bodily contact" means boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(8) "Public accommodation" means a place which is operated by an educational institution as defined in 49-2-101(17), MCA.

(9) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

(10) "Sexual intimidation" means any unreasonable behavior, verbal or nonverbal, which has the effect of subjecting members of either sex to humiliation, embarrassment or discomfort because of their gender.

(11) "Student" means a person who has gained admission and is currently engaged in the program of an educational institution. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1003 TREATMENT OF STUDENTS (1) Unless an exception is based on reasonable grounds, no student shall, on the basis of sex, be denied equal access to programs, extracurricular activities or services or benefits or be limited in the exercise of any right, privilege, advantage or opportunity.

(2) Because of the potential adverse impact upon female students of restrictions related to pregnancy or parental status, no student shall be discriminated against because of pregnancy or actual or potential parental status unless such action is based upon reasonable grounds.

(a) Unless an exception is based on reasonable grounds, pregnancy shall be treated as any other temporary disability.

(b) Unless an exception is based on reasonable grounds, pregnancy or parenthood shall not be considered cause for dismissal or exclusion from any program or activity.

(c) Participation in special programs provided for pregnant students or students who are parents shall be at the student's option.

(d) Educational institutions shall eliminate administrative and programmatic barriers to school attendance and school completion by pregnant students or students who are parents.

(e) Unless an exception is based on reasonable grounds, no student shall be discriminated against because of his or her actual or potential marital status.

(3) No student shall be subjected to sexual intimidation or harassment by any school employee, or by the effect of any school policy or practice when any employee or agent of the educational institution knew or reasonably should have known of the activity, policy or practice. No student shall be subject to sexual harassment or sexual intimidation by another student on school-owned or controlled property or at any school sponsored or supervised functions or activities when any agent or employee of the educational institution knew or reasonably should have known of the activity. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1004 ADMISSIONS (1) Unless an exception is based on reasonable grounds, no person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by an educational institution.

(2) In determining whether a person has satisfied any policy or criterion for admission, or in making any offer of admission, an educational institution shall not:

(a) give preference to one person over another on the basis of sex by ranking applicants separately on such basis, or otherwise;

(b) apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(c) otherwise treat one individual differently from another on the basis of sex.

(3) An educational institution shall not administer or require any test or apply any other criterion as the sole basis for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question. An exception to this rule may exist if it can be shown that alternative tests or criteria which do not have such a disproportionately adverse effect are unavailable.

(4) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, an educational institution shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes.

(5) An educational institution may make pre-admission inquiry as to the sex of an applicant for admission, but only if the inquiry is made equally of applicants of both sexes and if the results of the inquiry are not used in connection with discrimination prohibited by this part. Information relating to the sex of an individual that is obtained by the educational institution for statistical purposes may not be used in any admission determination. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1005 GUIDANCE AND COUNSELING SERVICES (1) Unless an exception is based on reasonable grounds, school personnel assigned to provide guidance and counseling services, and all materials used in the provision of those services, shall, without regard to their sex, encourage students to explore and develop their individual interests in vocational programs, employment, and educational opportunities. This may include encouraging students to consider nontraditional occupations, careers and educational courses or programs.

(History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1006 ACCESS TO COURSE OFFERINGS AND ACTIVITIES

(1) Unless an exception is based on reasonable grounds, an educational institution shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music and adult education courses.

(2) This rule does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This rule does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports, the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the educational institution shall use appropriate standards which do not have such effect.

(5) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Educational institutions may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1007 TEXTBOOKS AND INSTRUCTIONAL MATERIALS

(1) Textbooks and instructional materials are part of an educational program and as such are considered to be part of the terms and conditions or privileges provided by an educational institution under the Montana Human Rights Act and the Governmental Code of Fair Practices. Nothing in these rules shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or instructional materials. However, the commission encourages educational institutions to utilize textbooks and instructional materials that portray males and females in a wide variety of occupational, emotional and behavioral situations and in the full range of their human potential. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1008 EXTRACURRICULAR AND ATHLETIC ACTIVITIES

(1) Unless based on reasonable grounds, no person, on the basis of sex, shall be denied equality of opportunity to participate in extracurricular activities and athletics sponsored by an educational institution.

(2) In determining whether equality of opportunity is available, the factors to be considered, among others, are:

(a) whether the selection of sports and levels of competition effectively accommodates the interests and abilities of both sexes;

(b) the provision of equipment, supplies and services;

(c) scheduling of games and practice times;

(d) travel and per diem allowances;

(e) opportunity to receive coaching and academic tutoring;

(f) qualifications, assignment and compensation of coaches, officials, and tutors;

(g) provision of locker rooms, practice and competitive facilities;

(h) provision of medical and training facilities and services;

(i) provision of housing and dining facilities and services, and;

(j) publicity. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1009 FINANCIAL AID (1) Unless an exception is based on reasonable grounds, no person shall, on the basis of sex, be limited or denied financial assistance from an educational institution.

(2) To the extent that an educational institution awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-203, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1010 HOUSING AND AUXILIARY SERVICES FOR STUDENTS

(1) Unless an exception is based on reasonable grounds, an educational institution shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements or different services or benefits related to housing and auxiliary services.

(2) An educational institution may provide separate housing and auxiliary services on the basis of sex so long as the housing and auxiliary services provided to students of the other sex, be, as a whole, and to the extent reasonably attainable by the institution, proportionate in quantity and comparable in quality and cost to the student. Students shall be provided equal access and equal treatment. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-208, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

24.9.1011 EMPLOYMENT ASSISTANCE/PLACEMENT

(1) Unless an exception is based on reasonable grounds, an educational institution which assists an agency, organization or person in making employment available to any of its students shall obtain assurances that such employment is made available without discrimination on the basis of sex.

(2) An educational institution that makes school facilities available to or otherwise assists an agency, person, or organization known to engage in unlawful employment discrimination furthers and sanctions the discriminatory practice. (History: This rule is advisory only but may be a correct interpretation of the law, 2-4-308, MCA, Eff. 10/1/83; 49-2-204, 49-3-106, MCA; IMP, 49-2-307, 49-3-202, 49-3-205, MCA; NEW, 1987 MAR p. 312, Eff. 3/27/87.)

Subchapter 11

Interpretive Rules

24.9.1101 COVERAGE; ALIENS (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-101, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1102 COVERAGE; INSURANCE COMPANIES (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-306, MCA; NEW, Eff. 1/2/77; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1103 PRINTED MATTER FOR PUBLIC ACCOMMODATIONS; WHEN DISCRIMINATION PERMITTED (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-303, 49-2-304, 49-2-305, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1104 REAL PROPERTY TRANSACTIONS; WHEN DISCRIMINATION PERMITTED (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-304, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1105 EDUCATIONAL INSTITUTIONS; WHEN DISCRIMINATION PERMITTED (REPEALED) (History: 15-2-1706, MCA; IMP, 49-2-307, 49-2-308, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1106 BURDEN OF PROOF (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-308, 49-2-307, 49-2-301(1), 49-2-402, 49-2-401, 49-2-102, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1107 REAL PROPERTY TRANSACTIONS; AGE DISCRIMINATION (REPEALED) (History: 2-15-1706, 49-2-204, MCA; IMP, 49-2-305, MCA; NEW, 1985 MAR p. 1399, Eff. 7/1/87; REP, 1987 MAR p. 1094, Eff. 4/17/87.)

Subchapter 12

MATERNITY LEAVE RULES

24.9.1201 DEFINITIONS (1) "Disability as a result of pregnancy" includes any condition certifiable by a medical doctor as disabling, whether the condition arises as a result of the normal course of pregnancy, or as a result of abnormal medical conditions which occur in the course of a pregnancy, and may cover the time period beginning with conception through termination of gestation and a reasonable period for recovery therefrom.

(2) "Maternity leave" means any leave of absence granted to or required of an employee because of such employee's disability due to pregnancy. (History: 2-15-1706, MCA; IMP, 49-2-310, 49-2-311, MCA; NEW, 1984 MAR p. 1369, Eff. 9/14/84.)

24.9.1202 TERMINATION OF EMPLOYMENT DUE TO PREGNANCY PROHIBITED Section 49-2-310(1), MCA provides that it is unlawful for an employer or his agent to terminate a woman's employment because of her pregnancy. For purposes of this provision, "terminations" shall include all involuntary dismissals, all resignations in which the employees' resignation was required by the employer or permitted as the sole alternative to dismissal and those situations in which the totality of the circumstances surrounding a resignation by an employee indicate that the resignation was compelled by the conduct or policy of the employer or agent. Coercive conduct by an employer or his agent toward an employee in order to secure her resignation, when the employee's pregnancy constitutes a substantial reason for the conduct, shall be considered a violation of this provision. (History: 2-15-1706, MCA; IMP, 49-2-310, 49-2-311, MCA; NEW, 1984 MAR p. 1369, Eff. 9/14/84.)

24.9.1203 RIGHT TO REASONABLE LEAVE OF ABSENCE Section 49-2-310(2), MCA provides that it is unlawful for an employer or his agent to refuse to grant to an employee a reasonable leave of absence for pregnancy. In determining the standards of reasonableness which shall apply to a request for a leave of absence for a pregnancy, an employer shall apply standards at least as inclusive as those which he applies to requests for leave of absence for any other valid medical reason. (History: 2-15-1706, MCA; IMP, 49-2-310, 49-2-311, MCA; NEW, 1984 MAR p. 1369, Eff. 9/14/84.)

24.9.1204 MANDATORY LEAVE FOR UNREASONABLE LENGTH OF TIME PROHIBITED Section 49-2-310(5), MCA provides that no employer may require an employee to take a mandatory maternity leave for an unreasonable length of time. The reasonableness of the length of time for which an employee is required to take a mandatory maternity leave shall be determined on a case by case basis. However, the employer shall have the burden of proving that a maternity leave for a period of time other than that prescribed by the employee's medical doctor is reasonable, and in no case shall an employee be required to take an uncompensated maternity leave for a longer period of time than a medical doctor who has actually examined the employee shall certify that the employee is unable to perform her employment duties. Neither this section nor any other section of these regulations shall prohibit an employer and employee from mutually agreeing, in the case of the particular employee, to a longer period of maternity leave, either compensated or uncompensated than would be required by this regulation. However, no employer may enter into a general agreement with any group or association of employees which requires a longer period of mandatory maternity leave than is permitted by this regulation. (History: 2-15-1706, MCA; IMP, 49-2-310, 49-2-311, MCA; NEW, 1984 MAR p. 1369, Eff. 9/14/84.)

24.9.1205 VERIFICATION OF DISABILITY In any case where an employee makes a claim against her employer for any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, including any insurance or other disability plans referred to in 24.9.1206 and the claim is based on a disability covered by and defined in Title 49, Chapter 2, MCA, and these regulations, the employer may require that the disability be verified by medical certification by a physician competent to treat and diagnose the particular disability, that the employee is, or at the time for which the claim is made, was unable to perform her employment duties. For purposes of obtaining this medical certification the employer may require that the claimant submit to a physical or mental examination by a medical doctor to verify the claimed disability by medical certification. (History: 2-15-1706, MCA; IMP, 49-2-310, 49-2-311, MCA; NEW, 1984 MAR p. 1369, Eff. 9/14/84.)

24.9.1206 PREGNANCY-RELATED DISABILITIES TO BE TREATED AS TEMPORARY DISABILITIES Disabilities as a result of a pregnancy, childbirth or related medical condition are for all job-related purposes, temporary disabilities and shall not be treated less favorably than other temporary disabilities under any health, medical, or temporary disability insurance plan or sick leave plan maintained by employer. The question of maintenance is one of fact which will be judged upon all of the evidence. No written or unwritten employment policies or practices involving matters such as commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement or payment under any health, medical, or temporary disability insurance plan, or under any sick leave, disability leave or disability benefit plan whatsoever, whether formal or informal, shall be applied to disability due to pregnancy, on terms or conditions less favorable than those applied to other temporary disabilities. (History: 2-15-1706, MCA; IMP, 49-2-310, 49-2-311, MCA; NEW, 1984 MAR p. 1369, Eff. 9/14/84.)

24.9.1207 RETURN TO EMPLOYMENT AFTER MATERNITY LEAVE

Section 49-2-311, MCA requires that an employee who has signified her intent to return at the end of her maternity leave of absence shall be reinstated to her original job or an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it unreasonable or impossible to do so. (History: 2-15-1706, MCA; IMP, 49-2-310, 49-2-311, MCA; NEW, 1984 MAR p. 1370, Eff. 9/14/84.)

Subchapter 13

Insurance and Retirement Plans

24.9.1301 DEFINITIONS (1) The term "insurer" as used in this sub-chapter means any financial institution or person, as those terms are defined in 49-2-101, MCA, that issues, operates, sells or otherwise provides any type of insurance policy, plan, or coverage or any pension or retirement plan, program, or coverage to another person or persons, except that an employer or organization which provides to its employees or members a group insurance policy, plan, or coverage or pension or retirement plan, program, or coverage purchased from or provided by an insurer is not an insurer. (History: 49-2-204, MCA; IMP, 49-2-309, MCA, NEW, 1985 MAR p. 1615, Eff. 11/1/85.)

24.9.1302 RATES AND PREMIUMS; PROPERTY AND CASUALTY INSURANCE (1) Rates or premiums for any property or casualty insurance policy, plan, or coverage on a risk, when the risk is resident, located, or to be performed in the state of Montana shall not be based on sex or marital status.

(2) Factors which an insurer may take into account to determine rates or premiums for motor vehicle liability and property coverage include, but are not limited to:

- (a) The age of the driver.
- (b) The length of driving experience.
- (c) The number of years licensed to operate a motor vehicle.
- (d) A determination of which driver, among several insured individuals, is the primary driver of a covered vehicle, based upon the proportionate use of each vehicle insured under the policy by individual drivers insured or to be insured under the policy.
- (e) Average number of miles driven over a period of time.
- (f) Type of use, such as business, farm, or pleasure use.
- (g) Vehicle characteristics, features, and options such as engine displacement, ability of vehicle and its equipment to protect passengers from injury, vehicle make and model, and design characteristics related to damageability of the vehicle.
- (h) Commuting mileage over a period of time.
- (i) The number of cars insured or number of licensed operators in the household, without regard to the sex or marital status of the licensed operators. An insurer may not utilize a policy of establishing insurance rates for an individual based upon the driving record of a spouse who is a licensed operator but not a primary driver of the vehicle to be insured unless the policy is applied in the same manner to households of individuals not married to each other.

- (j) The amount of insurance.
- (k) The anticipated cost of vehicle repairs or replacement, which may be measured by age, price, cost, or value of the insured automobile, and other related factors.
- (l) Geographic location.
- (m) The accident record of the insured, including accidents for which the insured, although not cited, was substantially at fault.
- (n) The driving record of the insured, including citations. (History: 49-2-204, MCA; IMP, 49-2-309, MCA; NEW, 1985 MAR p. 1615, Eff. 11/1/85.)

24.9.1303 RATES AND PREMIUMS; LIFE, DISABILITY, AND HEALTH INSURANCE, ANNUITIES, AND PENSION AND RETIREMENT PLANS,

PROGRAMS, AND COVERAGES (1) Rates or premiums for life, disability, and health insurance policies, plans, and coverages, including annuities and pension and retirement plans, programs, and coverages, issued, delivered, or issued for delivery in the state of Montana shall not be based on sex or marital status.

(2) Factors which an insurer may take into account to determine rates or premiums for a life, disability, or health insurance policy, plan, program, or coverage, include but are not limited to age, weight, general health, personal habits such as smoking or other use of tobacco, consumption of alcoholic beverages, and the hazardous nature of work or recreation engaged in by the insured. (History: 49-2-204, MCA; IMP, 49-2-309, MCA; NEW, 1985 MAR p. 1615, Eff. 11/1/85.)

24.9.1304 PAYMENTS OR BENEFITS (1) No payments or benefits or any insurance policy, plan or coverage or pension or retirement plan, program, or coverage shall be based on sex or marital status. (History: 49-2-204, MCA; IMP, 49-2-309, MCA; NEW, 1985 MAR p. 1615, Eff. 11/1/85.)

24.9.1305 JURISDICTION AND APPLICABILITY DATE (1) Section 49-2-309, MCA, and this sub-chapter are applicable to all insurance policies, plans, and coverages and pension or retirement plans, programs or coverages and pension or retirement plans, programs or coverages subject to the laws of Montana and issued or entered into on or after October 1, 1985.

(2) Any term, payment, or benefit of an insurance policy, plan, or coverage or pension or retirement plan, program or coverage in effect prior to October 1, 1985, may be exercised in accordance with the terms of that policy, plan, program, or coverage. Options to increase or decrease coverage, annual rate adjustments and settlement options in life insurance policies are examples of terms which if included in a policy, plan, program or coverage in effect prior to October 1, 1985, may be exercised without regard to 49-2-309, MCA or these rules.

(3) In determining if a policy, plan, program, or coverage was in effect prior to October 1, 1985, the primary consideration will be whether a new contract is formed on or after October 1, 1985, or whether a pre-October 1 contract is continued after that date.

(4) Section 49-2-309, MCA, and these rules, are applicable to any agreement whereby an insurer and an insured agree to an extension or continuation of a pre-October 1, 1985 insurance policy, plan, or coverage or pension or retirement plan, program, or coverage when no consideration was given in the pre-October 1, contract for the right to extend or continue upon the same terms. The fact that the contract formed by extension or continuation is identical to the pre-October 1, 1985 contract is not material if no consideration for the right to extend or continue the pre-October 1 terms was given.

(5) Section 49-2-309, MCA, and these rules do not apply to any insurance policy, plan, or coverage or pension or retirement plan, program or coverage issued to or provided to a person who reside in a state other than Montana at the time the policy, plan, program or coverage became effective. (History: 49-2-204, MCA; IMP, 49-2-309, MCA; NEW, 1985 MAR p. 1615, Eff. 11/1/85.)

Subchapter 14

Guidelines for Employment

24.9.1401 GENERAL PRINCIPLES (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA, NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1402 SEX DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/2/77; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1403 AGE DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1404 PHYSICAL HANDICAP DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1405 MENTAL HANDICAP DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEALED) (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/4/75; REP, 1996 MAR p. 2871, Eff. 10/25/96.)

24.9.1406 PRE-EMPLOYMENT INQUIRIES (1) Any pre-employment inquiry made in connection with prospective employment which elicits information regarding race, color, national origin, religion, creed, physical or mental disability, age, sex, marital status or, in the case of government employment, political beliefs, shall raise a suspicion of intent to unlawfully discriminate except when:

(a) the inquiry is required for implementation of a bona fide lawful affirmative action plan,

(b) the inquiry is required by court ordered or other government reporting or record-keeping requirements or

(c) in the case of an inquiry concerning age, physical or mental disability, marital status or sex, the reasonable demands of the position (bona fide occupational qualifications) require an age, physical or mental disability, marital status or sex distinction.

(2) Whether or not any pre-employment inquiry is actually unlawful depends upon whether the inquiry was intended to be used or was used to unlawfully discriminate. The following pre-employment inquiries may raise a suspicion that the employer intends to use the information to unlawfully discriminate and, therefore, should not be asked at any time during the hiring process, including, but not limited to, on application forms and during interviews. The list contains suspect pre-employment inquiries followed, when appropriate, by examples of lawful inquiries regarding the same information.

(a) General inquiry regarding race, color, national origin, religion, creed, physical or mental disability, age, sex or marital status and, in the case of governmental employers only, political beliefs.

(b) Inquiry regarding original name. It is lawful to inquire regarding change of name for purposes of checking employment and education records.

(c) Inquiry regarding residency which requests information indicating birthplace or place of foreign citizenship, former or present. It is lawful to inquire regarding present address, previous address in the U.S. and duration of residency in a particular city, county or state.

(d) When age is a bona fide occupational qualification, an inquiry which requires that age be proven by birth certificate or baptismal record. When age is a bona fide occupational qualification, it is lawful to require that age be proven by a record which does not indicate national origin, ancestry or religion.

(e) Inquiry regarding skin, hair or eye color.

(f) Requirement of a photograph or a request for one, at the applicant's option.

(g) Inquiry regarding military experience outside the U.S. armed forces.

(h) Inquiry regarding criminal arrests. It is lawful to inquire regarding criminal convictions.

(i) Inquiry regarding native language, or the manner in which a foreign language was acquired. It is lawful to inquire regarding foreign languages spoken and degree of fluency.

(j) General inquiry regarding membership in organizations. It is lawful to inquire regarding membership in organizations the names of which do not indicate race, color, national origin, religion, creed, physical or mental disability, age, sex or marital status. Additionally, government employers should not inquire regarding membership in organizations the names of which indicate political beliefs.

- (k) inquiry regarding names of relatives.
- (l) Inquiry regarding garnishment record.
- (m) General inquiry regarding physical or mental condition. It is lawful to make necessary and job-related inquiries regarding specific physical or mental conditions required by the reasonable demands of the position.
- (n) Inquiry regarding pregnancy or childbearing plans.
- (o) Inquiry of applicants of only one sex regarding childcare arrangements.
- (p) Inquiry regarding citizenship.
- (q) Inquiry regarding height and weight.
- (3) Information necessary for tax, insurance, social security, compliance with garnishment or immigration laws or other legitimate business purposes may be obtained after employment. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-303, 49-3-201, MCA; NEW, Eff. 1/4/75; AMD, 1991 MAR p. 1841, Eff. 9/27/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1407 ADOPTION OF EEOC SEX DISCRIMINATION GUIDELINES

(1) The Human Rights Commission hereby affirms its adoption of the Guidelines on Sex Discrimination promulgated by the United States Equal Employment Opportunity Commission, as last revised as of July 1, 1998. The guidelines are codified as Title 29 CFR, chapter XIV, part 1604, including the appendix. A copy of the guidelines may be obtained from the Human Rights Bureau, Department of Labor and Industry. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/2/77; AMD, 1983 MAR p. 329, Eff. 6/1/83; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1408 ADOPTION OF EEOC RELIGIOUS DISCRIMINATION GUIDELINES

(1) The Human Rights Commission hereby affirms its adoption of the Guidelines on Religious Discrimination promulgated by the United States Equal Employment Opportunity Commission, as last revised as of July 1, 1998. The guidelines are codified as Title 29 CFR, chapter XIV, part 1605, including the appendix. A copy of the guidelines may be obtained from the Human Rights Bureau, Department of Labor and Industry. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/2/77; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1409 ADOPTION OF EEOC NATIONAL ORIGIN DISCRIMINATION GUIDELINES (1) The Human Rights Commission hereby affirms its adoption of the Guidelines on National Origin Discrimination promulgated by the United States Equal Employment Opportunity Commission, as last revised as of July 1, 1998. The guidelines are codified as Title 29 CFR, chapter XIV, part 1606. A copy of the guidelines may be obtained from the Human Rights Bureau, Department of Labor and Industry. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-102, 49-2-203, 49-2-401, MCA; NEW, Eff. 1/2/77; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1410 ADOPTION OF EEOC GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1) The Human Rights Commission hereby affirms its adoption of the Uniform Guidelines on Employee Selection Procedures, including their appendix, "Policy Statement on Affirmative Action" promulgated by the United States Equal Employment Opportunity Commission as last revised as of July 1, 1998. The guidelines are codified as Title 29 CFR, chapter XIV, part 1607, including the appendix. A copy of the guidelines may be obtained from the Human Rights Bureau, Department of Labor and Industry. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-102, 49-2-303, 49-2-401, MCA; NEW, Eff. 1/2/77; AMD, 1980 MAR p. 1137, Eff. 4/11/80; AMD, 1980 MAR p. 1711, Eff. 6/27/80; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1411 EEOC GUIDELINES READ IN CONJUNCTION WITH COMMISSION INTERPRETIVE RULES (1) The guidelines promulgated by the United States Equal Employment Opportunity Commission and adopted by the Human Rights Commission are to be read together and in conjunction with the provisions of ARM 24.9.1401 through 24.9.1412, the guidelines for employment adopted by the Human Rights Commission. (History: 2-15-1706, MCA; IMP, 49-2-102, 49-2-203, MCA; NEW, Eff. 1/2/77.)

24.9.1412 ADOPTION OF EEOC AFFIRMATIVE ACTION GUIDELINES (1) The Human Rights Commission hereby affirms its adoption of the affirmative Action Guidelines promulgated by the United States Equal Employment Opportunity Commission as last revised as of July 1, 1998. The guidelines are codified as Title 29 CFR, chapter XIV, part 1608. A copy of the guidelines may be obtained from the Human Rights Bureau, Department of Labor and Industry. (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-303, MCA; NEW, 1980 MAR p. 1712, Eff. 6/27/80; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

Subchapter 15

Housing Discrimination Procedures And Definitions

24.9.1501 PURPOSE AND SCOPE OF RULES (1) The following rules describe the procedures and definitions followed by the department and commission in investigating and resolving complaints of housing discrimination filed before July 1, 1997. Except as otherwise provided in this subchapter, ARM 24.9.101 through 24.9.331 also apply to the procedure for housing complaints. (History: 49-2-204, MCA; IMP, 49-2-305, 49-2-510, MCA; NEW, 1991 MAR p. 2488, Eff. 12/13/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1502 DEFINITIONS (1) "Child" means an individual who has not attained the age of 18 and who is domiciled with:

- (a) A parent or another person having legal custody of the individual; or
- (b) The designee of a parent, other person or entity having custody, with the written permission of the parent, other person or entity.

(2) "Familial status" - The protections afforded against discrimination on the basis of familial status shall also apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(3) "Housing for older persons" - The determination as to whether housing under any state or federal program is specifically designed and operated to assist elderly persons shall be made by the department, commission or the United States department of housing and urban development. (History: 49-2-204, MCA; IMP, 49-2-305, MCA; NEW, 1991 MAR p. 2488, Eff. 12/13/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1503 EXEMPTIONS (1) Lawful discrimination in housing under 49-2-403, MCA for the purpose of correcting a previous discriminatory practice must conform to legal standards justifying affirmative action.

(2) Lawful age or disability discrimination in housing under 49-2-403, MCA based upon capacity to make or be bound by contracts or other obligations must be legally justified by current legal standards regarding capacity to make or be bound by contracts.

(3) Any person or entity asserting entitlement to an exemption under 49-2-403, MCA has the burden of proving justification for discrimination. (History: 49-2-204, MCA; IMP, 49-2-305 and 49-2-403, MCA; NEW, 1991 MAR p. 2488, Eff. 12/13/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1504 COMPLAINTS AND ANSWERS (REPEALED) (History: 49-2-204, MCA; IMP, 49-2-305, 49-2-510, MCA; NEW, 1991 MAR p. 2488, Eff. 12/13/91; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1505 INVESTIGATION (REPEALED) (History: 49-2-204, MCA; IMP, 49-2-305, 49-2-510, MCA; NEW, 1991 MAR p. 2488, Eff. 12/31/91; REP, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1506 CONCILIATION (1) A conciliation agreement shall be a written agreement between the respondent and the complainant, and shall be subject to approval of the department on behalf of the commission.

(2) Conciliation agreements shall be made public unless the charging party and the respondent otherwise agree and the department or commission determines that the agreement involves a privacy interest entitled to protection by law. (History: 49-2-204, MCA; IMP, 49-2-305, 49-2-510, MCA; NEW, 1991 MAR p. 2488, Eff. 12/13/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1507 REPRESENTATION OF CHARGING PARTY (1) In any case in which the department has determined after investigation that there is substantial evidence that a discriminatory housing practice has occurred (reasonable cause finding), it shall provide representation for the charging party in any contested case hearing unless the charging party waives the representation. (History: 49-2-204, MCA; IMP, 49-2-305, 49-2-510, MCA; NEW, 1991 MAR p. 2488, Eff. 12/13/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

24.9.1508 FINAL DISPOSITION (1) The department and commission shall make a final administrative disposition of a complaint alleging a discriminatory housing practice within one year after the complaint is filed unless it is impracticable to do so. If the department and commission are unable to make a final administrative disposition within one year, the department shall notify the charging party and respondent in writing of the reasons for not doing so. (History: 49-2-204, MCA; IMP, 49-2-305, 49-2-510, MCA; NEW, 1991 MAR p. 2488, Eff. 12/13/91; AMD, 1998 MAR p. 3201, Eff. 12/4/98.)

Subchapter 16 reserved

Subchapter 17

Appeals to the Commission

24.9.1701 PURPOSE AND SCOPE OF RULES (TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-205, 49-2-501, 49-2-504, 49-2-505, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.109, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

Rule 24.9.1702 reserved

24.9.1703 DOCUMENT FORMAT, FILING AND SERVICE (TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-106, 49-2-204, 49-2-505, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.111, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.1704 TIME (TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-505, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.113, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.1705 JURISDICTION TO CONSIDER JURISDICTION (TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-505, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.115, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

Rules 24.9.1706 through 24.9.1710 reserved

24.9.1711 DISQUALIFICATION OF A MEMBER OF THE COMMISSION (TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-611, 49-2-204, 49-2-505, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.117, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.1712 EX PARTE COMMUNICATIONS (TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 2-4-613, 49-2-204, 49-2-505, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.119, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

Rule 24.9.1713 reserved

24.9.1714 OBJECTIONS TO DISMISSAL OF COMPLAINT OR REFUSAL TO DISMISS COMPLAINT (TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-509, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.121, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

Rules 24.9.1715 and 24.9.1716 reserved

24.9.1717 APPEAL OF FINAL ORDERS OF THE DEPARTMENT

(TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-505, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.123, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.1718 COMMISSION HEARINGS TO CONSIDER APPEALS

(TRANSFERRED) (History: 49-2-204, 49-3-106, MCA; IMP, 49-2-204, 49-2-505, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, to 24.9.125, and AMD, 2008 MAR p. 2636, Eff. 12/25/08.)

24.9.1719 DETERMINATION OF APPEALS (REPEALED). (History: 49-2-

204, 49-3-106, MCA; IMP, 49-2-204, 49-2-505, 49-2-506, MCA; NEW, 1998 MAR p. 3201, Eff. 12/4/98; REP, 2008 MAR p. 2636, Eff. 12/25/08.)

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